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THE
ARTICLED CLERK'S
HAND-BOOK.

FIFTH EDITION.

HALLILAY,

PRICE 4/-

Cw. U.K.

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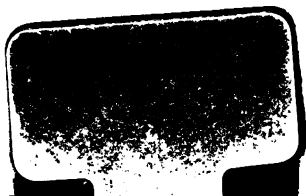
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THE
ARTICLED CLERK'S HAND-BOOK,

CONTAINING

A COURSE OF STUDY FOR THE PRELIMINARY,
INTERMEDIATE, FINAL, AND HONOURS EXAMINATIONS
OF ARTICLED CLERKS,

AND THE

BOOKS AND STATUTES TO BE STUDIED FOR
EACH EXAMINATION:

ALSO THE

LAW RELATING THERETO AND ALL THE NECESSARY FORMS:

BEING

A COMPLETE GUIDE TO THE CANDIDATE'S SUCCESSFUL EXAMINATION
AND HIS ADMISSION ON THE ROLL OF SOLICITORS.

TO WHICH ARE ADDED

PAPERS OF QUESTIONS ASKED AT EACH OF THE
SEVERAL EXAMINATIONS,

AND

A GLOSSARY OF TECHNICAL LAW PHRASES.

BY

RICHARD HALLILAY, Esq.,

OF THE MIDDLE TEMPLE, BARRISTER AT LAW, LATE HOLDER OF AN EXHIBITION
AWARDED BY THE COUNCIL OF LEGAL EDUCATION, AND ALSO OF THE
STUDENTSHIP OF THE FOUR INNS OF COURT.

AUTHOR OF "A DIGEST OF THE EXAMINATION QUESTIONS AND ANSWERS," &c.

FIFTH EDITION.

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1881.



LONDON :
PRINTED BY HORACE COX, 10, WELLINGTON STREET, STRAND, W.C.

PREFACE TO THE FIFTH EDITION.

SINCE the publication of the fourth edition of this little work many important changes have been made in the law relating to the examination of articled clerks, and in their admission as solicitors, by the Solicitors Act of 1877 and the regulations made thereon in the November of that year.

These alterations I have carefully noted in the present edition.

I have also added the new regulations as to the examiners and the examination for honours.

As the examiners select the text books to be studied by candidates for the intermediate examination and from time to time vary such works, I have not thought it any longer necessary to include a digest of the former questions asked at these examinations. By this means the publisher is able to reduce the price of the work. I have, however, given a complete set of the papers of

questions asked at a preliminary, an intermediate, a final, and an honours examination, respectively, as examples, which will be found in Appendix A.

I have omitted the chapter on bookkeeping as this subject no longer forms a branch of the intermediate examination of articled clerks.

R. H.

5, *Serjeant's Inn, Temple.*
January, 1881.

PREFACE TO THE FIRST EDITION.

IN the following pages the Writer has endeavoured to give to the Articled Clerk a clear and comprehensive guide to the Study of the Law in all its branches, also every information respecting the Examinations, &c., &c., at a small cost. The work contains Information upon Study, Law Lectures, Debating Societies, Mutual Correspondence, Common Place Books, &c., &c. (compiled from the best Authorities), a sketch of each of the different branches of the Law, and the books to be read and studied thereon. Also full information as to the stamping and enrolment of Articles of Clerkship, and the service under them; giving Notices of Examination and Admission, and the requisite Forms for such purpose; the proceedings to be taken subsequent to the Examination in order to get admitted, and the necessary Forms; and the Fees payable.

And to make the Work as useful as possible, a Glossary of Technical Law Phrases is added.



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THE

ARTICLED CLERK'S HAND-BOOK.

INTRODUCTORY REMARKS.

BEFORE anyone can become a Solicitor three examinations must be successfully passed. One in general knowledge, prior to entering into articles of clerkship, termed the "Preliminary Examination"; another in law, when half the period of pupillage has passed, called, "The Intermediate Examination"; and the last or "Final Examination," at the expiration of the clerkship. It will readily be admitted, therefore, that the articulated clerk, embryo or actual, requires some assistance in his course of study, which we may at once remark must be methodical and thoughtful. "It cannot," says Mr. Warren, (a) "be too frequently impressed upon the student that with *method* he may do everything, without it he can do nothing, in legal studies." No study tries the memory like the study of the law. And Sir Henry James, Q.C. in his address to the United Law Students' Society, said "it behoved all students well to study the great profession of the law, more especially now in these modern days, when it was becoming more and more complicated, as society grew more artificial. A student of these latter times had a much more difficult task to perform than those who lived in the days of Blackstone. In the time of that great commentator, and before him, lawyers endeavoured more to grasp at the great ideas and principles of the law than to follow out its sinuosities, as was too often the case in the present time. There was no one to blame for such a state of things, as it was the natural outcome of our present civilization, which was always introducing something new, for which laws had to be made, to protect,

(a) Warren's Law Studies, p. 795, 2nd edit.

control, or put down." Let, therefore, everyone who determines to enter the law commence with a firm resolution of overcoming every difficulty.

"No profession," says Mr. Warren, "so severely tries the TEMPER as that of the law. . . . The young student is perpetually called upon to exercise calmness and patience, though fretted by the most provoking difficulties and interruptions. He is apt to feel in a manner enraged, disgusted, dispirited, when he finds from time to time how much he has utterly forgotten that he had most thoroughly learned; and the increasing difficulties of acquiring legal knowledge and turning it to practical account: all this, moreover, not in abstract speculative studies, but in those which he must promptly master, because his livelihood is at stake, his whole future lifetime is to be occupied in them. Do all that he can, strain his faculties to the uttermost, approach his subject by never so many different ways, and in all moods of mind, he will nevertheless be sometimes baffled after all; and on being assisted by his tutor, or possibly, even by some junior fellow student, be confounded to think that so obvious a clue as he is then supplied with, could have escaped him. How often has the poor student on these occasions *banged* his books about, and shutting them up, with perhaps a curse, rushed out of chambers in despair. How apt is the recurrence of such mortifications to beget a peevish, irritable, desponding humour, which disgusts the victim of an ill-regulated temper with himself, his profession, and everybody about him. Now let him from the first *calculate* on the occurrence of such obstacles, that so he may rather overcome them than suffer them thus to overcome him. True, legal studies are difficult, often apparently insurmountable; but what of that? DIFFICULTY is a friend; the best friend of the student, not his enemy—his bugbear."^(a) Let not, therefore, the youth who has not at least some taste for the profession of the law enter it; for to such it will be a dry and uninviting labour; for even its most zealous votaries find its first approaches difficult and toilsome, though afterwards comparatively easy.

But those who enter the profession with a liking for it, and also as a means of gaining a livelihood, must come prepared to walk its paths with integrity and without corruption, and to diligently study that profession; "for," says the late Mr. Sydney Smith, "some of the greatest and most important

(a) Warren's Law Studies, pp. 108, 109, 2nd edit.

interests of the world are committed to your care; you are our protectors against the encroachment of power; you are the preservers of freedom, the defenders of weakness, the unravellers of cunning, the investigators of artifice, the humblers of pride, and the scourgers of oppression. When you are silent the sword leaps from its scabbard, and nations are given up to the madness of internal strife." And the late Mr. Justice Coleridge, in his address to the bar on his retirement from the bench, says: "... So long as England is enterprising, rich, and free, the law must exercise a prominent influence." How much, then, is there to cause all who enter the legal profession to be scrupulously honourable in their conduct; and to acquire a thorough knowledge of their profession, so that the characters, the wealth, and the well-being of those who have trusted in their honour and knowledge may not suffer.

It is to be lamented that the articled clerk is too often left without any guide or instructor. In most instances he comes into an office direct from school, or perhaps from one of the universities, and is allowed to struggle through his clerkship as he best can; at most, perhaps, he has an old copy of Blackstone, which has mouldered on his principal's bookshelves for years, put into his hands with injunctions to study it with diligence, and if he should do so, will in course of time make the important and mortifying discovery that more than half of it is obsolete, and must be dismissed from his memory. Mr. Warren forcibly illustrates the danger and injury arising from thus reading a book without being previously instructed by some competent person as to the propriety of so doing. He thus narrates the facts which happened to a friend of his own: "On quitting college he set himself down to a year's solitary and 'hard' reading: devoting special attention upon the second volume of Blackstone's Commentaries, and the corresponding portions of Coke upon Littleton. Conceiving it to be of the utmost importance to become accurately acquainted with the old tenures, he almost committed to memory all those portions of the work in question which related to that subject: perpetually exercising himself in the law of Knight's Service, Homage, Fealty, Escuage, Wardship, Escheat, Lineal and Collateral Warranty, and so forth: 'and you may conceive,' says he, 'my mortification on discovering how completely my labour had been lost, though I certainly acquired in the same time some valuable knowledge of parts of real property law now too generally neglected.'

Another friend had thus 'read up' with great care a particular head of commercial law, and completely mastered all the fine-drawn distinctions to be found in the cases cited in the book which he had been reading. Almost the first thing that befel him on entering chambers [of a pleader] was his confidential intimation to a fellow pupil of the feat which he had performed. 'Ah, my friend,' he replied, 'have you never heard of such and such a *statute*? Thank heaven, it's given the *coup-de-grâce* to all that nonsense!'"(a) But to resume our more immediate subject, the articled clerk is, in a great many offices, made to do as much copying as can be got out of him, and even to run mere errands, quite unconnected with the office. In fact, he is made to do the duties of an office boy, instead of being treated by his master as a pupil from whom he has taken a large fee and expressly covenanted to teach and instruct in the "practice or profession of a solicitor." It cannot then be wondered at that the articled clerk turns from the law, as thus presented to him, with dislike, and pursues with ardour the congenial and exciting sports of cricket, boating, or other pleasures to the entire neglect of his studies and the duties of the office. For these reasons a contest at this period of the clerkship generally takes place between the principal and clerk; if the principal prevails, and the clerk is still used as a mere machine for the principal's benefit, he becomes an unthinking plodder; if the clerk succeeds in throwing off all restraint, and refuses to continue the drudgery set before him, he becomes a thorough idler, and loses all taste for business.

Would it not, then, be better and more just for a solicitor to refuse an articled clerk and the premium paid for the supposed instruction, if that solicitor is, either from being too much engaged in his practice, or, from being himself too ignorant, unable to give proper instruction to one whom he binds himself so to do?

But should the articled clerk, as is too probable, be placed under the guidance of such a master, he will soon become acquainted with the fact, and he should then determine to overcome the difficulties that present themselves, by industry and attention. and by seeking the information he desires from other sources, which is denied by one who ought to give it. "Biography," says Mr. Wright, "will teach him that many, with perhaps

(a) Warren's Law Studies, p. 670, 2nd edit.

more disadvantages than he has to encounter, have attained the highest eminence. Saunders was a beggar-boy, taught to write by attorneys' clerks in the Temple, and after serving a clerkship, and practising with success at the bar, he was made a Chief Justice, and has left behind him some of the best reports extant. Lord Hardwicke, Lord Somers, Sir John Strange, Lord Kenyon, and Lord Ashburton, arrived at the highest judicial situations, though they were attorneys' clerks."^(a) And we have several men now living who have risen from the lowest ranks of the profession to the highest.

At the Intermediate Examination formerly distinction was given to those candidates under the age of twenty-six who answered better than others, but this has been discontinued. At the Final Examination honours are now thrown open to the competition of all candidates without reference to age. Full particulars as to the honours examination are given *post*, ch. 7, sect. 2.

(a) Wright's Advice on the Study of the Law, p. 11.

CHAPTER I.

APPOINTMENT OF EXAMINERS.

THE following regulations for the appointment of examiners for the purpose of conducting the three examinations of articled clerks are prescribed by the rules made in November, 1877, in pursuance of the Solicitors Act, 1877 (40 & 41 Vict. c. 25):—

EXAMINATION COMMITTEE.

1. There shall be appointed, in the month of January in every year, by the Council of the Incorporated Law Society, an Examination Committee, hereinafter referred to as 'the Committee,' consisting of such number (not less than *five* nor more than *nine*) of members of the Council as the Council may determine.

The members of the Committee shall hold office until the appointment of their successors, and any member of the Committee shall be eligible for reappointment.

A casual vacancy in the Committee may be at any time filled by the Council, but a person appointed to fill a casual vacancy shall hold office so long only as the person in whose stead he is appointed would have held office if the vacancy had not occurred.

The Committee may elect a Chairman of their meetings and generally may make such regulations for the conduct of their business as they may see fit; but no business shall be transacted at any meeting unless, at least, *three* members are present.

2. Such Master of the Queen's Bench, or Common Pleas, or Exchequer, Division of the High Court of Justice as may be from time to time nominated by the Masters of those Divisions shall be an *ex officio* member of the Committee for such period as the Masters may in each case determine, and shall have power to act and vote on the Committee.

3. The members of the Committee shall be examiners, and, with the assistance of one of the said Masters as *ex officio* Examiner (so long as the said Masters continue to act as *ex officio*

Examiners), and with the assistance (so far as they may think proper to resort to the same) of the Examiners to be appointed by the Council, as hereinafter mentioned, shall conduct the Intermediate and Final Examinations.

The Preliminary Examinations shall be conducted under the supervision of the Committee, as hereinafter mentioned.

The Committee shall have such powers and duties, in addition to those conferred or imposed on them by these regulations, in reference to the examinations held under these regulations as may be from time to time delegated to them by the Council.

PAID EXAMINERS.

4. The Council may from time to time, by resolution, appoint such competent persons as they may see fit to be Examiners to assist the Committee in the Preliminary, Intermediate, and Final Examinations, and the Council may at pleasure remove any Examiner so appointed.

5. There shall be paid to every Examiner so appointed, not being a member of the Committee or of the Council, out of the fees received by the Society from candidates for examination, such remuneration as the council may from time to time, by resolution, prescribe.

CHAPTER II.

THE PRELIMINARY EXAMINATION IN GENERAL KNOWLEDGE.

By the operation of the 40 & 41 Vict. c. 25, and the regulations made thereon, it is provided that every person proposing to enter into articles of clerkship, not having been called to the degree of utter barrister in England, or not having taken the degree of B.A., or LL.B., at the Universities of Oxford, Cambridge, Dublin, Durham, London, the Queen's University in Ireland, or B.A., LL.B., M.A., or LL.D., in any of the Universities of Scotland (none of such degrees being honorary), or passed the first public examination before moderators at Oxford, or the previous examination at Cambridge, or the examination in arts for the second year at Durham, or the matriculation examination of the Universities of London or Dublin (although not placed on the first division of such matriculation examination), or the moderations examination of St. David's College in the county of Cardigan, Wales, or the junior students' general examination at Owens College, Manchester, or have passed one of the local examinations established by the University of Oxford, or one of the non-gremial examinations established by the University of Cambridge, or one of the examinations of the Oxford and Cambridge Schools Examination Board, or the examination for the first-class certificate of the College of Preceptors, must produce to the Registrar of Solicitors a certificate that he has successfully passed an examination by special examiners, duly appointed.

The preliminary examinations are held in the months of February, May, July, and October, on such days and at such places as the committee shall from time to time appoint, and consist of

1. Writing from dictation.
2. Writing a short English composition.
3. Arithmetic.—The first four rules, simple and compound, the rule of three; and decimal and vulgar fractions.

4. Geography of Europe and History of England.
5. Latin.—Elementary knowledge of Latin.
6. Each candidate must also offer himself for examination in two, at his selection, of the following languages :—

1. Latin.	3. French.	5. Spanish.
2. Greek, Ancient.	4. German.	6. Italian.

These examinations are conducted in the Hall of the Incorporated Law Society in Chancery-lane, or at the following towns, under the supervision of the examiners, or of *two local solicitors*, to be appointed by the examination committee :—

Birmingham.	Chester.	Liverpool.	Shrewsbury.
Bristol.	Durham.	Manchester.	Swansea.
Cambridge.	Exeter.	Newcastle-on-Tyne.	Worcester.
Cardiff.	Lancaster.	Oxford.	York.
Carlisle.	Leeds.	Plymouth.	
Carmarthen.	Lincoln.	Salisbury.	

The committee are, five calendar months previous to the time appointed for taking each examination, to leave with the secretary of the Incorporated Law Society a list of the books selected by them for such examination in the said six languages, and a copy of such list may (by a candidate) immediately thereupon be obtained from the secretary.

Every person so applying to be examined must, at least thirty days before the examination at which he proposes being examined, give notice in writing to the secretary of the Incorporated Law Society, Chancery-lane, of his desire to be examined, and state in such notice the two languages in which he proposes to be examined, the place at which he wishes to be examined, and his age and residence and place or mode of education, and such notice must be signed by the candidate.

The following is the form of notice to be given of intention to apply to be examined :—

Notice is hereby given, that A. B., of aged , who was educated at , intends on the and days of next, to present himself for examination at previous to entering into articles of clerkship, and that he proposes to be examined in the and languages.

Dated the day of 18 .

A. B.
(Present address.)

To the Secretary of the Incorporated Law Society.

The fee payable to the Council of the Incorporated Law Society on giving this notice is 2*l*.

Soon after giving this notice, the candidate will receive from the secretary of the Incorporated Law Society a circular informing him of the time, the place, and the subjects of the examination, also directions as to the mode of conducting it, which are to the following effect :

1. During the examinations candidates will be designated by numbers, and each candidate must write his name and number to every paper he sends in.

2. The time fixed for the examination to begin on each day is half-past nine in the forenoon, but, that a candidate may not be excluded by an accidental delay, half an hour further is allowed.

3. Candidates must deposit all books or papers before entering the examination room.

4. Candidates are not allowed to leave the examination room until half an hour has expired from the commencement of the examination.

5. After quitting the room, no candidate is allowed to return.

6. Candidates detected using a book or manuscript brought for assistance or in copying from the papers of any other candidate, or in giving or receiving assistance, are disqualified and their names removed from the list.

About a month after the examination, the candidate will receive a notice from the Incorporated Law Society, informing him whether he has or has not passed the examination.

If he has been successful, the notice will also state when a certificate to that effect will be ready for delivery.

Candidates who have failed to attend the examination, or who were not successful, may seek to pass any subsequent examination on giving at least fourteen days' previous notice in writing to the secretary of the Incorporated Law Society, Chancery-lane. A further fee of 1*l.* is payable thereon. (a)

In concluding this subject, we may add that by sect. 11 of the 40 & 41 Vict. c. 25, the Presidents of the three Divisions of the High Court and the Master of the Rolls, or any one or more of them, may, if they or he think fit, under special circumstances, dispense with this examination, either wholly or partially. The mode of application is by petition, supported by the necessary evidence.

The order dispensing with the preliminary examination is

(a) See Regs. November and December, 1877.

usually granted to persons who have been clerks to solicitors for ten years and upwards. The petition in these cases generally alleges that the petitioner, by reason of the poverty of his parents, was imperfectly educated, and was at an earlier age than is usual obliged to earn his own livelihood; that he has acted as clerk to certain solicitors (whose names and addresses must be given) for the past ten years, and that a solicitor is willing to receive him as an articled clerk; that he is unable to pass the Preliminary Examination, and therefore prays an order dispensing therewith.

The petition must be signed by the petitioner, the solicitor to whom he wishes to be articled, and by those solicitors he has served, and by any gentlemen of standing who know him. It is then lodged at the chambers of the judge to whom it is addressed.

If an order be granted, it can be obtained a few days afterwards, for which 5s. is paid in stamps.

BOOKS TO BE READ.—As to the books to be read for the "Preliminary Examination," no doubt most of these will have been studied at school; but for the benefit of those who have allowed some years to elapse after leaving school before they proposed entering the profession, we give the names of a few works which will be found serviceable.

A good work on grammar and English composition is "Angus on the English Language," but it is a heavy book and contains much that is not necessary; and if the student is not inclined to be laborious, we advise "Allen and Cornwell's School Grammar," or "Adams on the English Language." We may add, however, that if the student is well versed in his Latin grammar (of which "Edward's Accented Latin Grammar" is advised), he need trouble himself but little as to his English grammar.

On Geography, "Cornwell's School Geography" is sufficient. The student must, however, practise himself in the study and drawing of maps, in order that he may be able to answer many of the questions on this branch.

A short history for these examinations is "Collier's History of the British Empire," but a History of England by David Hume, termed "The Student's Hume," is more full than Collier's. However, we may remark that these histories, or in fact any other that we ever read, will not answer questions such as "Give

a history of the life of the Black Prince," or "of Mr. Fox," and the like. Answers to questions such as these can only be obtained from biographical sketches.

Of the two languages in No. 6, of course, the candidate selects the languages himself, gives the Secretary of the Incorporated Law Society notice thereof, as stated *supra*, and the secretary then informs the candidate the particular book or part he is to study in that language.

The student will find the paper of questions asked by the examiners at the "Preliminary Examination" held in October, 1880 in Appendix A.

CHAPTER III.

THE ARTICLES OF CLERKSHIP, ETC.

THE Preliminary Examination successfully passed, the next thing is to enter into articles of clerkship to a solicitor. No particular form of articles is required (*a*), but a form is generally used, which the solicitor always furnishes. If the clerk be not of full age, his father or guardian must be a party to the articles and covenant for him.

The articles bear a stamp duty of 80*l.*, which, in order to avoid payment of the penalties imposed by the 33 & 34 Vict. c. 97. sects. 15 and 43, and to obviate any difficulty arising on their registration, should be impressed before their execution. For, although by this Act articles of clerkship may be stamped after execution on payment of the penalties imposed thereby, which vary from 10*l.* to 50*l.*, according to the time the articles have remained unstamped after their execution; yet if *Ex parte Williams* (26 L. J. 167, Q. B.) is still good law, the power given by this Act to stamp articles of clerkship *after the expiration of six months* from their execution would appear to be useless. For, in the above case it was held to be the duty of the official to refuse to enrol articles of clerkship unless duly stamped when produced to him. Moreover, the 33 & 34 Vict. c. 97, s. 22, imposes a penalty of 10*l.* on the official enrolling them unstamped.

The period of service under the articles must be either for three, four, or five years respectively.

1. It need only be for *three* years if the clerk has taken the degree of bachelor of arts or bachelor of laws in the University of Oxford, Cambridge, Dublin, Durham, or London, or in the Queen's University in Ireland, or the degree of bachelor of arts, master of arts, bachelor of laws, or doctor of laws, in any of the Universities of Scotland, none of such degrees being honorary degrees. And at the end of such period the clerk may, after due examination, be admitted as a solicitor. And service for any part

(*a*) *Ex parte Forrest*, 14 L. T. Rep. N. S. 285.

of the said term not exceeding one year with the London Agent of the country solicitor in the business, practice, or employment of a solicitor, either by virtue of any stipulation in such articles, or with the permission of such solicitor, is good service under such articles for such part of the said term.

And a *bonâ fide* clerk to a solicitor for ten years may, after serving three years under articles, with the consent in writing (endorsed on his articles of clerkship) of his principal to whom he may be bound, be examined and admitted a solicitor (23 & 24 Vict. c. 127, sect. 4). Clerks, however, in return for this, must undergo the preliminary examination in general knowledge, unless a dispensation be obtained.

Also an utter barrister in England (sect. 3), who has first procured himself to be disbarred (*Ex parte Bateman*, 14 L. J. Q. B. 89) or writers to the signet and solicitors in the Supreme Court of Scotland, or procurators in any of the Sheriffs Courts of Scotland (sect. 15), or members of the faculty of advocates in Scotland (35 & 36 Vict. c. 81, sect. 1) may, after serving three years under articles of clerkship, and after due examination be admitted as solicitors.

2. The service need only be for *four* years if the clerk has passed the first public examination before moderators at Oxford, or the previous examination at Cambridge, or the examination in arts for the second year at Durham or the entrance examination at the University at Dublin, or the matriculation examination at the University of London, and has been placed on the first division of such matriculation examination, or the legal students' higher examination in Owens College, Manchester, or the moderations examination of St. David's College in the county of Cardigan, Wales. And at the expiration of this period any such clerk may, after due examination, be admitted as a solicitor (see 40 & 41 Vict. c. 25, Regs. Dec. 1877.)

3. In all other cases the service must be for *five* years, unless the power given to the judges by the 13th section of the 40 & 41 Vict. c. 25, be exercised in favour of some university, college, &c., not already specified. And where the term of service, whether it be for three, four, or five years, expires in any vacation, the clerk may offer himself for examination in the term preceding such vacation, and be admitted on the expiration of his articles : (23 & 24 Vict. c. 127, s. 12.)

And by the 40 & 41 Vict. c. 25, a barrister of *not less than five years* standing at the bar, who has procured himself to be dis-

barred with a view of becoming a solicitor and has obtained a certificate from two of the benchers of the inn to which he belongs, of his fitness to practise as a solicitor, is exempted from passing the Intermediate Examination, and is entitled, on passing the Final Examination, to be admitted and enrolled as a solicitor : (sect. 12.)

Within six months after the execution of the articles, an affidavit of the solicitor having been duly admitted, and of the execution of the articles by the solicitor and clerk, specifying their names and abode and the day of execution, must be made and filed with the proper officer at the Petty Bag Office, Rolls-yard, Chancery-lane, and the articles will thereupon be enrolled and registered by him. If not registered within this period, the service of the clerk will count from the enrolment and registration, and not from the date of the articles, unless the court otherwise orders. (a) Good reason accounting for the delay must be shown, and notice of the intended application must be given to the Incorporated Law Society. (b) The articles cannot, as before shown, be enrolled until they have been stamped. (c)

The following may be the form of affidavit above referred to :

In the High Court of Justice.

We, A. B. of and C. D. of , gentlemen, make oath and say—

And first I, A. B., for myself say—

1. That by articles of clerkship dated the day of , in the year one thousand eight hundred and , and made between C. D. of , gentleman, solicitor of the Supreme Court, of the one part ; and E. F., of , and H. F., son of the said E. F., of the other part ; the said H. F., for the considerations therein mentioned, did put, place, and bind himself clerk to the said C. D., to serve him in the profession of a solicitor, from the day of the date of the said articles, for the term of [five or four or three] years, thence next ensuing, and fully to be complete and ended, and which said articles were in due form of law executed by the said C. D., E. F., and H. F., on the day of the date thereof ; and that the several names C. D., E. F., and H. F. set and subscribed opposite to the several seals affixed to the said articles, as the parties executing the same, are of the proper and respective handwritings of the said C. D., E. F., and H. F., and were written and subscribed in my presence and in the presence of F. B., of , and that the names A. B. and F. B., set and subscribed to the said articles as witnesses, to the due execution thereof, are of the proper and respective handwritings of me this deponent, and of the said F. B.

(a) 6 & 7 Vict. c. 73, ss. 8 and 9.

(b) *Ex parte Leggett*, 3 Jur. 1218 ; *Ex parte Gliss*, 3 L. T. Rep. N. S. 268 ; *Ex parte Blades*, 44 L. J. 115, C. P.

(c) *Ex parte Williams*, 26 L. J. 167, Q. B. ; 33 & 34 Vict. c. 97, sect. 22.

And I, the said C. D. for myself say as follows ;

2. At the time of the execution of the said articles, I was and still am duly admitted a solicitor of the Supreme Court of Judicature in England.

3. I reside at , in the county of

4. The said H. F. resides at , in the county of
Sworn, &c.

The articles must, within three months after they are registered and enrolled, together with a certificate of having passed the Preliminary Examination or evidence of exemption therefrom (see *ante*, ch. 2) be produced to the registrar of solicitors at the Incorporated Law Society for entry in his book ; and if this be not done within the above time, the service will count from the date of such production and registry, unless a judge of one of the Divisions of the High Court on motion otherwise orders. Notice of this motion must be given to the secretary of the Incorporated Law Society. (a)

On the expiration of a month from the time the articles were left for entry as above they may be obtained, with the fact of entry duly indorsed thereon.

If there is a provision in the articles to that effect, or if the principal consents thereto, clerks bound for four or five years may serve one year with a barrister or special pleader, and if articulated in the country one year with a London agent. But those bound for three years cannot serve any part of the term with a barrister or pleader, and only one year of it with the London agent.

In future the articulated clerk must not without due authority hold any other office or employment during his articles, the tenth section of the 23 & 24 Vict. c. 127, enacting that no person hereafter bound by articles of clerkship to any solicitor shall, during the term of service mentioned in such articles, *hold any office or engage in any employment whatsoever* other than the employment of clerk to such solicitor, and his partner or partners (if any) in the business, practice, or employment of a solicitor. save as by the 6 & 7 Vict. c. 73, or this Act otherwise provided. (b)

By the 37 & 38 Vict. c. 68, sect. 4, it is, however, provided that the above section shall not thereafter apply to cases where the articulated

(a) 23 & 24 Vict. c. 127, s. 7. Regs. Nov. 1877.

(b) This section has been construed very strictly. See *Ex parte Peppercorn* (14 L. T. Rep. N. S. 252) ; *Ex parte Greville* (43 L. J. Rep. C. P. 58).

clerk, before or after he enters upon any office or engages in any employment, has applied for and obtained the written consent of the solicitor to whom he is bound and the sanction of the Master of the Rolls or of one of the judges of the High Court of Justice on order made.

The application for the order containing the sanction of the Master of the Rolls or other judge must be on fourteen days' notice to the registrar of solicitors. The notice must state the names and residences of the applicant and the solicitor to whom he is bound, and the nature of the office or employment, and the time proposed to be devoted to it. (a)

In granting an order, the judge has power to impose such conditions as he may think fit; and, if any be imposed, it must be proved at the proper time to the satisfaction of a judge or the examiners that they have been complied with. (b)

If from any cause it becomes necessary during the continuance of the service that the unexpired portion thereof should be served with another solicitor, there must be new articles entered into and not an assignment of the original articles; for in June, 1877, an order was issued by the Master of the Rolls, which states that "For the future it is requested that no assignment of articles be made, but that further articles be entered into reciting that the original contract has been put an end to by mutual consent (or by the death of the master, or as the case may be)."

The amount of stamp duty on further articles is 10s. (c)

The same law and practice applies to further or supplemental articles as to the original articles.

An adjudication in bankruptcy against the principal, will, on notice to the trustee in bankruptcy either by the bankrupt or his article clerk, be a complete discharge of the articles; and if any premium was paid by or on behalf of the clerk to the bankrupt, the trustee may, on the application of the clerk, or of some person on his behalf, pay such sum as such trustee, subject to an appeal to the court, thinks reasonable out of the bankrupt's property, or he may, at the request of the article clerk or of some person in his behalf, order further articles to be entered into with some other solicitor. (d)

(a) Sect. 4.

(b) Sects. 5 and 6.

(c) See 33 & 34 Vict. c. 97.

(d) See 6 & 7 Vict. c. 73, s. 5; 32 & 33 Vict. s. 71, c. 33.

The articles of clerkship having been entered into, we strongly advise the articulated clerk to at once commence his legal studies, and continue them steadily during the whole period of his pupillage ; and in doing this we trust he will find assistance by a perusal of the following pages.

CHAPTER IV.

SECTION I.

ON MEMORY, ITS ABUSE AND ITS AIDS.

It is a general complaint amongst artied clerks that they have bad memories; do what they will, try ever so often, they cannot remember what they read. But let us observe at the outset, that men are no more born with minds naturally dull and indocile than with bodies of monstrous shapes, which, as we all know, is a thing of rare occurrence. Defects of memory, then, are, no doubt, defects that may be remedied, if not entirely cured: they take various forms; some memories at once seize the matter presented to them, but as quickly lose it; others have the greatest difficulty in laying hold of a subject—have to exercise long and weary attention—when once there, however, it remains fixed. Notwithstanding all this, we again assert that the machine is generally good, but it is not skilfully used and managed. Many memories are weakened by disuse, and may therefore be strengthened by exercise, gradual at first, increasing as the memory strengthens. It must be clear to everyone that, as the brain is the organ of the mind, whatever cause tends to strengthen the former must aid and strengthen the latter. Mr. Raithy says, “Not only the *inclination* to recollect, but the very powers themselves of recollection are impaired and at length *lost* by disuse.”

It is said, that no study tries the memory like the study of the law; therefore the law student should use all proper methods to aid and strengthen his memory, for no system can *create* one. Too many students pursue a course of reading which tends to weaken, rather than strengthen, the memory. Knowing his memory is weak to begin with, the student leaves all his reading until about two or three months prior to his examination, then plunges headlong into his books without any previous training. He sits down at his desk and reads for three or four consecutive hours, and sometimes even more than this, and in that time his

eye passe over a great number of pages containing a large amount of matter almost, if not entirely, new to him. He gets up from his task thinking he has done a good day's work, and never gives the subject any further thought that day, and the next is chagrined and mortified to find his previous day's hard labour so barren; in fact, that he recollects little or nothing of the matter. He again sets to work in the same way as before with the like result, and, in the end, gets disheartened, begins to think he is a fool, and feels inclined to give up his profession. An apt illustration of the course just pointed out is that of filling a bottle with liquid, for if you attempt to pour in the liquid too quickly, half of it is spilt and wasted. Instead of reading in the manner just mentioned, we would advise the student to commence with *careful* reading for *one* hour at a time; this done, let him close his book and take a sharp walk and try how much of his reading he *remembers*. We say "a sharp walk," for it has been truly said, the mind works best when the body is in motion, and both body and mind get refreshed and strengthened by the exercise. Or, if the student prefers, he may test his memory by self-examination from some book of questions containing a corresponding chapter to the one he has been reading. As the memory strengthens the student may increase the number of hours of study, but many writers assert that not more than two *consecutive* hours can be given to legal study with advantage to the student. We are also strongly of opinion that, even with advanced students, it is by far the most beneficial course to read not more than six hours a day, divided into at least two portions, the remainder of the day being given to thought, examination, and physical exercise. In these remarks we are borne out by writers such as Sir Matthew Hale, Sir Eardley Wilmot, Mr. North, the author of the "Advocate," and others.

One of the best methods used for aiding memory is the association of ideas; a simple word or a sight will often call up a whole passage, which otherwise would have remained occult, or lost to recollection.

There can scarcely be any who, on opening a long-disused book, sees a faded flower between its leaves placed there by himself and quite forgotten, but does not at once remember the history of that forgotten flower—the place from whence it came, and the time and why it was placed between the leaves

This association of ideas may be applied to the study of the

law. Let us take for example an estate tail which, as is well known, is one given to a person and the heirs of his body. Now if we look at this limitation as an abstract rule of law only, there is nothing to fix it in the memory. It must be learned by heart. But if the student will suppose that his father is tenant for life under the settlement; that the estate (which must be one well known to him) is burdened with pin money for his mother during his father's life, and a rent-charge by way of jointure if she survives his father; that subject to these limitations that he (or his elder brother, if one) is the first tenant in tail, &c. Let him remember that his father is the protector of this settlement, and that the entail cannot be effectually barred without his consent, &c.; in fact, keep himself and his own family inseparately connected with the supposed entail, and he will always have a date to fall back upon to aid his memory. The same plan may be adopted with an estate for life and the powers incidental. Still keeping his father before him and the same estate and supposed entail, he will, after reading, more readily remember that *his* father, the tenant for life (rather than the mere letter A.), may cut wood for repairs of the mansion house, &c., work existing mines on the estate, &c., but cannot hurt *him*, the tenant in tail in remainder, by cutting timber or committing waste, &c. The student thus has not only an association of ideas, but a *chain* of ideas linked one within the other, which he may carry out to almost any length where the principles of the law are concerned, and even in practice to some extent; as by making himself a supposed plaintiff, and one of his friends a supposed defendant, and so work out the action or suit.

When it becomes necessary to commit rules or maxims to memory, do not attempt to master them all at once; learn one by careful reading and reflection before you attempt another, and if there be an illustration pay attention to that. Great assistance on this point will be found by writing out one of the rules or maxims and putting it in the pocket, and whenever an opportunity occurs pulling it out and reading it. This may be done in those spare and otherwise useless moments when riding on a railway or in an omnibus, or even when walking. This plan is also particularly applicable to learning times of procedure.

As to committing to memory generally. It is a common phrase "do not parrot." This is good advice in its way, and

it would be desirable if we could get the reason for all we read, to apply the maxim "*Scire autem proprie est, rem ratione et per causam cognoscere*," but this is often impossible, especially on points of practice. And some students find great difficulty in understanding even the principles of the law: when this is the case, when the comprehension is dull, learning by heart *must* be resorted to, and the intellect awakened by constant questioning and explanation by someone competent to interrogate and instruct.

Another mode of assisting the memory is to try to *forget* that which you have been reading. This method has sometimes succeeded when all others have failed.

As to recollecting dates or Acts of Parliament: it is not often necessary to do this, but where it is do not try to learn many at once; and when a few are fixed in your memory, learn others by *comparing* them with those you already know; thus you know that the Statute of Frauds was passed in the reign of Car. II., and it is easy to recollect that the Statute of Uses was *not* passed in that reign, but in a prior one, viz., in that of Hen. VIII., and so on. When a given number of actions, pleas, or the like have to be learned, always get the *number* of them first, and that will assist in recollecting whether those you enumerate are all there, and are correct. Thus formerly interpleader applied to *four* actions only, viz., assumpsit, debt, detinue, and trover.^(a) Remark, also, that the two first named are of one and the same class of action, viz., *contract*, and the two latter of another, viz., *tort*. Careful attention to these little points is a great aid to the memory. Another mode is, when there is an enumeration to take the initial letters of each word and see what they spell; thus, joint tenants require four unities, viz., possession, interest, title, time; the latter has reference to all the preceding unities, and should come last: the initial letters here make *pitt*. This mode not only helps the memory, but enables you to discover whether you are enumerating in order.

The student should guard against burdening his memory with unnecessary matter. For example, the examiners do not expect candidates to be able to cite every statute, much more to give the chapters and sections of Acts of Parliament. It is therefore trying the memory unnecessarily to attempt this. It is quite

(a) Interpleader now applies to all actions: (Order I., r. 2.)

sufficient for all ordinary purposes to remember the reign in which the most important acts were passed, such as the Statute *De donis*, the Statute of *Quia emptores*, the Statute of Uses, the Statute of Frauds, the Wills Amendment Act of 1837, the Judicature Acts, and the like.

SECTION II.

HOW TO STUDY.

Whatever course of reading the student adopts, he should always remember that his object is two-fold: to acquire and retain legal knowledge, and at the same time to discipline his mind to engender habits of legal *thought*. "A student should labour by all proper methods," says Dr. Watts, "to acquire a steady fixation of thought. The evidence of truth does not always appear immediately, or strike the soul at first sight. It is by long attention and inspection that we arrive at evidence; and it is for the want of it that we judge falsely of many things." Whatever is read should be read with moderate slowness, and when read, pondered upon. *Sat cito, si sat bene*, was Lord Eldon's favourite motto. "A cursory and tumultuary reading," says Lord Coke, "doth ever make a confused memory, a troubled utterance, and an uncertain judgment." It can surely require no arguments to convince the most obtuse that there can be no benefit derived from reading, if what is read is not understood, and retained in the memory. It is true that when the study of the law is first commenced, the efforts made to fix the attention are painful and unsatisfactory; but this is the case on the commencement of any new literary pursuit. And this wears off as we become familiarised with our subject; and as our knowledge increases, we soon learn to distinguish what parts are the most important to us, and accordingly direct our greatest attention upon those parts.

When treating of this subject, Mr. Warren says: "While, however, the student is warned against falling into a hasty, slovenly, superficial habit of mind, let him not fall into the opposite extreme—that of sluggishness and vacillation. Careful and thoughtful reading does not imply a continual poring over the same page or subject. The student might in such a case justly compare himself to the pilgrim stuck in the Slough of

Despond. Because he is required to look closely at each individual part, in order thoroughly to comprehend the whole, let him not suppose that he is to scrutinize it as with a microscope. What is required is simply *attentive reading*. If he cannot, after reasonable efforts, master a particular passage, let him mark it as a difficulty, and pass on. He will by and by return, in happier mood, with increased intellectual power and knowledge, and find his difficulty vanished. The student's reading, however, must not only be thus attentive, it must be *steadily pursued*." (a)

The foundation of all study should be laid by a careful perusal of elementary works; principles preceding practice in every branch of the law. The student should make himself thoroughly acquainted with general principles, and he will then have something to direct him in the difficulties that will constantly arise. They will guide him in determining points that come before him in practice; when we give the reason for our argument, and state the principles upon which it is based, we are the more certain to carry conviction. In fact, theory and practice should, as far as possible, go on together. If a student is unacquainted with general principles, he will, in all his future studies and practice labour under heavy disadvantages. What benefit can be had from a perusal of the reported cases if the principle of law upon which the judgment is founded is not known. "As reason," says Lord Coke, "is the soul of the law, it cannot be said that we *know* the law until we apprehend the reason of the law; that is, when we bring the reason of the law so to our own reason that we perfectly understand it as our own; and then, and never before, we have an excellent and inseparable property and ownership therein, so as we can neither lose it, nor any man take it from us; and we shall be thereby directed very much, the learning of the law being chained together in many other cases. But if by his study and industry the student make not the *reason* of the law *his own*, it is not possible to retain it in his memory; for though a man can tell the law, yet if he know not the reason thereof, he will soon forget his superficial knowledge; but when he findeth the right reason of the law, and so bringeth it to his natural reason, then he comprehendeth it as his own; this will not only serve him for the understanding of the particular case, but of *many*

(a) Warren's Law Studies, p. 787, 2nd edit.

others ; for cognitio legis est copulata et complicata ; this knowledge will long remain with him."

As we have before observed, the student must carry out his labours methodically. We strongly advise him to master not only one book, but one branch of the law, before he commences another.

There is some diversity of opinion as to whether a book should be read over in the *first* instance in a cursory manner, so as to gain merely a general knowledge of the whole work, and afterwards be carefully studied ; or should from the first be diligently perused and studied. The author has generally adopted the latter course, but which of the two courses should be taken is left with the student.

As to the time the student should give each day to study, we will, in addition to what we have said in the previous section, give a few opinions of writers on the subject. "The attempt to parcel out a particular period of the day," says the commentator on North's Discourse, "or a certain number of hours as sufficient for the study of the law, is perfectly nugatory ; it is as though a physician were to prescribe a certain dose of medicine for all his patients without regard to their age, strength, or constitution. 'Four hours in a morning of close application to his books,' says Mr. North, 'is the sufficient quantum' ; while, according to Sir Eardley Wilmot, 'six hours of severe application' is necessary." (a) But, as before observed, no exact rule can be laid down, so much depends upon each particular case—the capacity of the student, the work he is studying. One student shows far more aptitude than another—one book requires greater care and attention in its perusal than another ; and also the state of the faculties from one day to another must be taken into consideration. We cannot compel the mind to put forth the same powers from day to day. One day it is clear, strong, and powerful, capable of comprehending and retaining anything it may be engaged upon ; another it is just the reverse—do what we will, try never so often and determinedly, yet we cannot fix its attention ; the eye wanders over the page, but the mind receives no impression. When this is found to be the case, it is useless to continue the subject further, for no benefit will be received ; shut up therefore your book and rest awhile ; in time you will return and renew your studies with renovated faculties, and to proper

(a) Notes and Illustrations to Roger North's Discourse, pp. 58, 59, note.

advantage. But the student must be careful to distinguish between such feelings as these, and the mere love of pleasure, or those of sheer indolence.

Respecting the number of books the student should read—he will have learned from what we have already said that it is not the *quantity* but the *quality*—not the *extent* but the *manner* of reading that leads to proficiency. Lord Eldon did not read many books, yet how learned was he! “Attentive reading,” says Warren, “frequent reflection upon what is read, and application of it to business, are the only guarantees of distinctness of thought and recollection.”(a) With a great many students, no sooner do they begin to read a book than they have a too eager desire to get through it as fast as possible, forgetting that to *read* is not necessarily either to *understand* or to *remember*. If many works are read, a great deal of time must be consumed, which would have been far more advantageously employed in thought. “One book,” says Phillips, “well digested is better than ten hastily slubbered over.” A law book cannot be read like a novel—taken up and put down at whim or pleasure. “Men who read for amusement or instruction on general topics,” says Mr. Wright, “may read as they please and acquire information. It is not necessary for *such* purposes critically to weigh sentence after sentence; and where amusement is the object, to cast the eye over the page may be sufficient. But where knowledge is to be acquired, which depends upon the construction of words, and an accurate idea of scientific terms, the student must advance with patience and resolution proportionate to his undertaking. Books which every man reads may be perused as a newspaper; but such as contain information of an abstruse nature, requisite to be permanently impressed on the mind, must be repeatedly read, and with minute attention.”(b) “Our reading keeps proportion with our meats,” says Phillips, “which if it be swallowed whole is rather a burthen than nourishment.”

When a passage has been read, the student should close the book and calmly ponder upon what he has read, to see that he understands and retains it; and if, upon this examination of himself, he finds he has gained but a dim notion of the author's meaning, let him reperuse the subject, and again examine himself till he finds that it is firmly rooted in his mind. If, however,

(a) Warren's Law Studies, p. 829, 2nd edit.

(b) Wright's Advice on the Study of the Law, p. 27.

after the student has frequently read and studied any particular passage, he fails to understand it, let him seek out someone who is capable of elucidating the point, and have his doubts cleared up; but if this cannot be done, as before advised, let him mark the passage with a pencil, and pass on, and when his mind is clear again return to it, and most probably the difficulty will disappear. When he comes to a word or phrase he does not comprehend, he should immediately take up his law dictionary, which no student should be without, and search out its meaning before he proceeds further; for it is useless to read what is not fully understood. By this mode of study the reasoning powers will be strengthened, and the path to further studies greatly eased. In reading, too, the memory will be greatly assisted by looking to the words as referring to a case which the student should form in his mind. General maxims, first principles and definitions, should be committed to memory.

On this subject we will, in conclusion, quote the remarks of Mr. Scarlet (afterwards Lord Abinger and Chief Baron of the Court of Exchequer). When a student he says: "I at first found Comyn's Digest and the cases very hard of digestion, but after some study bestowed upon the cases and arguments in the reports, I found much entertainment and exercise of the intellect in reading the modern cases. As I grew more familiar with the principles which I gathered up as I went along, I became bolder, and after reading the statement of the case and the arguments of the counsel on both sides with great attention I laid aside the book and endeavoured to apply my own store of knowledge to solve the question by giving judgment on the case. Sometimes I wrote down the opinion I had formed, but more frequently was contented with thinking over the arguments, and coming to the conclusion which I thought just before I read the opinion of the judges. At the commencement of this practice, I found myself very inadequate, and that my presumption was often rebuked by the learning and wisdom of the judges. After some perseverance I was delighted to find I made progress, and that the practice was not only a source of entertainment, but afforded me the best means of judging of the proficiency I had made in my studies. At length I was overjoyed to find that I was right in the majority of instances. . . . This practice has been of great use in giving me the early habit in reflecting upon the principles and rules of the law, and applying them to new cases by my own reading."

But the article clerk must not be content with reading

alone, and become a mere student. He must attend at the office, read the correspondence, and acquaint himself with the mode of conducting business there. He should also acquire a knowledge of making out bills of costs, &c. Unless these duties are attended to, the clerk will, when he comes to practise for himself, be utterly lost—all at sea as to the practical duties of a solicitor. He will also do well to give some attention to the mechanical duties of the office; for although it is wrong to compel an articled clerk to be constantly performing the duties of a writing clerk and office boy, yet if he does not gain any knowledge of the mode of performing them, he will be unable to know, when he comes to have clerks of his own, whether they are performing their duties properly. The articled clerk should also when practicable attend the various courts of law and equity, where much valuable information may be obtained.

COMMON-PLACE BOOKS.—As to the advantage of what are termed common-place books, there is great variety of opinion. Mr. Wright says: "To the young student I fear they would prove *more injurious than useful*, and tend more to weaken than assist the memory. . . . On first entering upon the study of the law I am confident that it will be better to employ the time in reading than in transcribing particulars, which a little acquaintance with the principles and the practice of the profession will render useless. (a) They are, however, recommended by Sir Matthew Hale, Sir S. Romilly, and others, who advise the student to copy into a common-place book the substance of whatever is read; Sir S. Romilly thinking it the "*only way* in which law books can be read with much advantage." The object for which a common-place book is used, however, ought to be to note down points of great importance, and those which it is particularly desired to remember. The great fault of these books is that they lead the articled clerk to note down in his book what ought to be noted in his memory. It is far better to give an extra amount of attention to a particular passage and thus retain it in the memory, than note it down in a book, and then forget it. And the student may easily invent a series of marks to be made in the margin of his books, which will draw his attention to the passages thus marked. The same mark should be always used

(a) Wright's Advice on the Study of the Law, pp. 188, 191; see also Warren's Law Studies, pp. 796, 854-9, 2nd edit.

to denote the same meaning. Mr. Warren, in commenting upon the remarks of those in favour of common-place books, says, "but it may be suggested, why not rather imprint it in his memory? Why beget the habit of reliance rather on a common-place book than on the memory?" (a) Again, if the note book is often used it will become bulky and voluminous, and thus defeat the end for which it was designed. Mr. Warren, again treating of these books, says, "he knows one individual, who, with prodigious industry, had compiled four thick folio volumes, very closely written, and most systematically distributed; and who subsequently acknowledged to the author, that it had proved to be one of the very worst things he had ever done; for his memory sensibly languished, for want of food and exercise, till it lost its tone almost irrecoverably." (b) If, however, a note book is used, brevity must be strictly attended to, and the matter noted should be in the student's own language, containing an epitome of the whole passage, and not simply a copy of the passage from the book he is reading, unless it be something which strikes the student as being very remarkable. We think that for the purpose of analysis and exemplification, the note book may be used with advantage. We will endeavour to illustrate what we mean. Supposing the student has been reading the fourth chapter in the first volume of Mr. Serjeant Stephen's Commentaries on the Laws of England, we think he might with advantage make the following analysis:—

Estates of Freehold not of Inheritance are of four kinds.

1. AN ESTATE FOR LIFE	POWERS AND INCIDENTS.
(created by act of the parties)	Tenant is entitled to <i>estovers</i>
may be either for the life of	or <i>botes</i> , i.e., an allowance of
the grantee, or of another, in	wood for repairs, fuel, and the
latter case termed an estate <i>pur</i>	like.
<i>autre vie</i> .	Cannot commit waste, i.e.,
	destroy or alter any part of the
	tenement, &c., to the injury of
	those in remainder or reversion.
	Entitled to emblements when
	his estate determined by the act

(a) Warren's Law Studies, p. 796, 2nd edit.

(b) Warren's Law Studies, p. 856, 2nd edit.

of God or the law. May lease the estate, and his lessee entitled to emblements or to hold over till end of current year's tenancy, paying rent.

2. AN ESTATE TAIL AFTER POSSIBILITY OF ISSUE EXTINGUISHED is created by act of God; as where one is tenant in *special* tail, and the person from whose body the issue was to come is dead.

POWERS AND INCIDENTS.

Tenant has the same powers, with the *additional* one of committing ordinary waste, as a tenant for life, and with this one exception, subject to same incidents.

3. AN ESTATE BY THE CURTESY OF ENGLAND arises by operation of law, and is that which the husband takes after the death of his wife in her lands of inheritance (legal or equitable) of which she was seised in possession, if issue be born alive capable of inheriting.

POWERS AND INCIDENTS.

Tenant has the same powers, and the estate is subject to the same incidents as that of a tenant for life, save that tenant may commit ordinary waste.

4. AN ESTATE IN DOWER arises by operation of law, and is that which a woman (married before 1st January, 1834) takes in a third part of all the lands and tenements of which her husband was seised in fee simple or fee tail, in possession at any time during coverture, and of which any issue she might have had might by possibility have inherited.

POWERS AND INCIDENTS.

Tenant has the same powers, and the estate is subject to the same incidents as that of a tenant for life.

Widow entitled to remain in husband's mansion forty days, till dower assigned — called widow's quarantine.

Dower may be barred by the wife's adultery, by a divorce, and by detaining title-deeds. Widow's right enforced by action. Dower may also be prevented by taking a conveyance, subject to dower uses.

As to dower since 1834, see 3 & 4 Will. 4, c. 105.

Again, suppose he has been reading the chapter on the law of descents in the same volume, the following might easily be deduced :—

It is a maxim that *nemo est hæres viventis*; therefore, the ancestor must be dead before he can have an heir. Before that time, the person is called either the heir *apparent* (being the person who, should he outlive the ancestor, will be the heir at all events, as the eldest son); or the heir *presumptive* (he being one who, should the ancestor die immediately, would be his heir, but whose hopes may be cut off by the birth of an heir apparent, as a daughter by the birth of a son). The ancestor must also die intestate to transmit by heirship.

The law of descents is *founded* on custom, not statute. It dates as far back as the reign of Hen. 2; but had not attained complete maturity till the reign of Hen. 3, or Edw. 1, and underwent no change from that time till partially reconstructed by the stat. 3 & 4 Will. 4, c. 106; and as modified thereby it may be reduced to the following rules or canons :—

I. In every case the descent shall be traced from the *purchaser*.

The purchaser is he who took the lands in any other manner than by *descent*. And by the statute, the last person who had a right to the land, and is not proved to have taken it by descent, &c., is to be deemed a purchaser. This is contrary to the old law.

II. Inheritances shall in the first place lineally descend to the issue of the purchaser *in infinitum*.

III. Males are preferred to females, and an elder male to a younger; but females, when there are several, take together.

IV. The issue of the children of the purchaser *represent* or take the place of their parent *in infinitum*, the children of the same parent being always subject (among each other) to the same law of inheritance as is contained in the third rule.

Thus the child, or grandchild, of the eldest son will take preference over a younger son, *i.e.*, the child or grandchild's uncle, &c.

V. On failure of the issue of the purchaser, the inheritance shall descend to the nearest lineal ancestor then living, in the preferable line, if *no issue* of a *nearer* ancestor in that line exist.

Under this rule the estate, on failure of issue, will descend to

the father, if living; and if he be dead, to *his* issue. Therefore, if B. had two sons, C. and D., and C. acquires property, and dies intestate and without issue, his estate will go to his father B.; but if B. is dead, it goes to *his* issue D., who is also C.'s brother.

This rule is different from the old law, which said that the land should rather escheat than ascend to an ancestor. The descent of an inheritance was compared to that of a falling body, which, of course, never goes upwards.

As to which is the preferable line, appears by the next rule.

VI. Among the lineal ancestors of the purchaser, the paternal line is preferred to the maternal. That is, the father and all the *male* paternal ancestors of the purchaser and their descendants are admitted before any of the *female* paternal ancestors or their descendants; and all the female *paternal* ancestors and their descendants before the mother or any of the *maternal* ancestors or their descendants; and the mother and all the *male* maternal ancestors and their descendants before any of the female maternal ancestors or their heirs.

It will be observed that the male stock is throughout preferred to the female.

The 8th section of the statute has settled a question which was the subject of much controversy, by enacting that when the male paternal ancestors and their descendants fail, and the female paternal are admitted, the mother of a *more remote* male paternal ancestor and her descendants shall be preferred to the mother of a *less remote* male paternal ancestor or her descendants; and when the female maternal ancestors are admitted, the mother of a more remote male maternal ancestor and her descendants are to be preferred to the mother of a less remote male maternal ancestor and her descendants.

VII. Kinsmen of the whole blood to the purchaser are preferred to those related by the half-blood; but a kinsman of the half blood is now capable of being heir, and such kinsman inherits next after a kinsman in the same degree of the whole blood, and after the issue of such kinsman, when the common ancestor is a male; and next after the common ancestor when such ancestor is a female.

This rule, like the fifth, is an alteration in the law of inheritance; for, as the law stood formerly, the half-blood, like the

lineal ancestor, was excluded, and the lands escheated rather than he should take.

VIII. Where there is a total failure of heirs of the purchaser, &c., the descent shall be traced from the person last entitled to the land as if he had been the purchaser.

Miscellaneous points connected with descent.

1. To complete his title the heir must *enter* upon the lands.
2. The lands descended are liable to the debts of the ancestor, as well those by simple contract as by specialty.
3. When a testator (since 1833) devises land to his heir, such person takes as devisee, and not as heir.
4. A man takes by purchase lands limited to the "heirs" or "heirs of the body" of his ancestors, by the conveyance of a stranger, if not falling within the rule in Shelley's case; but the descent to such land is to be traced as if the ancestor had been the purchaser. Purchaser is to be here taken in its legal sense.

The preceding example embodies the salient points of the chapter (about fifty pages) upon which it is based. Analysing thus tends to reflection, method, and classification, which must, of course, greatly assist the student in the acquirement of knowledge.

Where the clerk contents himself with very brief notes, and the work he is studying is his own, the notes may be made with advantage in the margin of the book.

LAW LECTURES.—Lectures are generally deemed aids to the study of the law; but mere law lectures which are not followed up by class teaching and questioning are almost, if not entirely, useless. We have asked the opinion of many who have attended lectures, as to the benefit derived from them, and without an exception all have stated that they received little or no advantage from them.

Before the student can derive any benefit from law lectures, he must have a fair knowledge of the subject about to be lectured upon; and unless he has, it will be impossible for him to follow the lecturer, let him give what attention he may. Thus, suppose the student has by diligent attention managed to follow the lecturer to a certain point, and he then finds that the lecturer is reading something he no longer understands, he begins to think about the subject, and when he next gives his mind to the lec-

ture, the point upon which he has been pondering no longer engages the lecturer's attention; the thread of the subject is completely lost, and inattention to the rest of the lecture is the result. To remedy this, the reader should give notice to the students upon what subject his lecture is to be, and the books and cases he intends to read and refer to. He should also from time to time examine his hearers, and see that he is properly understood, and explain away their doubts. The student should also read up the subjects of the lecture after as well as before he hears it.

Dr. Johnson thus speaks of lectures: "People have nowadays got a strange opinion that everything should be taught by lectures. Now, I cannot see that lectures can do so much good as reading the books from which the lectures are taken. I know nothing that can be best taught by lectures, except where *experiments* are to be shown. You may teach chemistry by lectures; you might teach making of shoes by lectures."^(a) Dr. Parr shows the advantages of a tutor over a lecturer. "The tutor," he observes, "can interrogate, where perhaps the lecturer could only dictate; and, therefore, in his intercourse with learners, he has more opportunities for ascertaining their proficiency, correcting their misapprehensions, and relieving their embarrassments."^(b) This fully bears out what we have already said—viz., that the lecturer should examine his hearers to see that he is properly understood, and clear up their doubts, if any exist. Again, as Mr. Warren justly observes, "all pupils have not the same abilities and the same acquirements. How, then, can lectures be framed so as to be suitable to all? But in private teaching the tutor can adapt his instruction to the peculiar wants of his pupils; and their attention is kept awake by the consciousness that each is personally addressed."

Mr. Joy, in one of his letters on legal education, speaking of the difficulties which now necessarily beset the path of the solitary student, says: "These evils would be in a great degree met by his being obliged to attend lectures delivered, and examinations presided over by those who, by practice in their profession, could experimentally apply and develop the principles of legal science. But to make lectures effectual, not only must a systematic course of reading, to be pointed out by the lec-

(a) Boswell's Life of Johnson, vol. ii. p. 6.

(b) Works, vol. ii. p. 568.

turer, be combined with them, but oral and written examination on the subject of each lecture is essential to make such course of instruction effectual to any considerable degree. The habit of attending a lecture, merely to write down its contents, is worse than useless. It tends to superficial knowledge. To be profound, to be practical, to combine practice with theory, the art with the science of law, a regular course of study, bearing upon the lectures that are delivered, and an earnest and hearty oral examination of the student from day to day, and the sympathy of the lecturer, and a kind and anxious spirit on his part, to encourage and assist the student, and create in him a moral as well as intellectual interest in that which is to engross him in after years, are all essential."

We will take leave of this subject by stating what the Select Committee on Legal Education report upon it. They say: "It is not sufficient that the professor deliver a lecture; lectures without examination, frequent and accurate, without class teaching, without private instruction, fall dead on the majority of hearers; and, however popular in the outset, sooner or later, on the concurrent testimony of some of the most experienced lecturers and lawyers themselves, gradually deteriorate, and finally lose their efficacy and audience. But lectures, class teaching, and private instruction may each and all be excellent, and yet be productive of no real benefit, unless it be also practicable to insure hearers. Some maintain that this result is sure to follow from the superior and intrinsic merit of the instruction and instructor; that to secure acceptance it is only necessary to render acceptable; while others again reply, that without incentive or obligation of some kind, remote or immediate, (a) the highest excellence will not be appreciated, and the most valuable opportunities will be passed by."

The Council of the Incorporated Law Society have, we are glad to say, now adopted, to some extent, the recommendations embodied in the above report; for in connection with the lectures given on the common law, on conveyancing, and on equity, there are classes conducted under the guidance and superintendence of the lecturers proceeding concurrently with the lectures. The instruction given is confined to an examination of the students upon the subject of a preceding lecture, or on portions of a given book bearing on the same subject. "The teaching of

(a) Articled clerks have this incentive—the examination, honours.

the lecturers will thus," says the Council, "be amplified and impressed on the memory, and the system of constant examination will test from time to time the progress made by the students."

The fee payable for the *lectures* by clerks of members for all the three courses is 3*l.* 3*s.*, and by clerks of non-members 4*l.* 4*s.* The student may, however, only attend one or two courses of lectures, in which case he pays less. The fee or subscription for the *classes* is, by every subscriber for all the branches of instruction, 5*l.* 5*s.*, and for each branch 2*l.* 12*s.* 6*d.*

Students may subscribe for and attend the lectures and classes either separately or collectively, but, as the instruction given in the classes has reference to preceding lectures, it will be almost useless to attend the classes without first attending the lectures.

There are now also elementary law classes, designed for articled clerks who have not passed their intermediate examination. These classes are at present (1880-81) based on Stephen's Commentaries of the Laws of England, 7th or 8th edition, which is the work selected for the Intermediate Examinations for 1881.

These classes are held twice a week (except during vacations) from November to July. The subscription by clerks of members is 3*l.* 3*s.*, and by clerks of non-members, 4*l.* 4*s.*(*a*)

DEBATING SOCIETIES.—These societies, if properly conducted, are great aids to the student in the acquirement of knowledge, for the love of victory will spur him on to great exertion; he has a keen interest in the subject before him, and frequently spares no pains or labour to get it well up. They have, however, one drawback; they often cause the student to give too much time and attention to particular points. But if conducted under a president, who is able to sum up the merits of the case *pro* and *con.*, and pronounce a calm judgment, which will have weight with his hearers, this would add greatly to its advantages.

Mr. Warren speaks in favour of debating societies, and has collected the opinions of several old writers on the point, the first of whom is the celebrated Lord Coke; he says: "The next thing to be observed by our student is *conference* about those

(*a*) Full information as to these lectures and classes may be obtained from the secretary of the Incorporated Law Society, Chancery-lane.

things which he reads and writes. Reading without hearing is dark and irksome; hearing without reading is slippery and uncertain; neither of them yield seasonable fruit without conference." Fulbeck says: "Students will not do amiss, if at certain times they meet among themselves, and propose such things as they have heard or read, by that means to be assured of the opinion of others in those matters. By this means they may be brought better to understand those things, one, perhaps, seeing and giving a reason which the other is not aware of; and if he misapprehend a point of law, the other may instruct him therein. Hereby are they likewise brought more firmly to retain in memory the things that they have heard or read."

This leads us to the art of speaking, and for the following hints we are entirely indebted to the late Mr. Serjeant Cox's work on "The Arts of Writing, Reading, and Speaking." (a)

THE ART OF SPEAKING.—We may premise that no man is born an orator. On the other hand, it is no less true that the orator must be endowed with certain faculties, wanting which, he cannot achieve greatness.

The first care of a speaker is *to have something to say*; his next is, *to say it*; and the third is, *to sit down when he has said it*.

Every person who aspires to be a speaker must laboriously learn the art of *composition*. Information must be sought and reflected upon. Observation will supply the most useful materials; reading the most various; reflection the most profound.

The best preparation for oratory is to practise the art of writing. Write on the subjects on which you anticipate that you may be required to speak. You write, however, for the sake of acquiring clear and rapid *thoughts* and expressive *words*—nothing more. The *writing* of speeches is not to be encouraged. The framework of spoken thought differs widely from that of written thought. Revise, therefore, what you have written, thinking how you would have said the same thing had you spoken it. Comparison between them will show you the difference of manner demanded, and disturb the habit which otherwise might become incurable of throwing your thoughts into the peculiar form of written composition.

The object of oratory is to influence your audience by *per-*

(a) This work, which is addressed to law students, is published at the *Law Times* office, and has already reached a third edition. Its price is 7s. 6d.

*sua*ding them. Earnestness, therefore, is necessary to success. An appeal to the sentiments and feelings of a mixed audience is always more effective than an appeal to their reason. For, although the intelligence of an audience varies considerably, the emotions are nearly the same in all. But to kindle emotions in your hearers, you must yourself be moved.

Do not begin the practice of composition by writing speeches. Begin with a plain narrative in the plainest words. From this proceed to essay, to argument, to declamation, to poetry. At last, when you are well practised, begin to write imaginary speeches in a modest way, and do not be discouraged by the difficulties which beset you at first. For, before you attempt to *speak* a speech you should *write* one. Choose your theme, and write your speech as you would speak it; imagine yourself in the presence of an audience, upon your feet, and about to address them. Begin with the "headings," then expand them into a speech. When this is done stand up, paper in hand, and spout your performance to the table and chairs. By this means you will learn its faults.

Your language cannot be too simple. Pure plain Saxon English is intelligible to all.

When you have written and recited half a dozen speeches, and you feel yourself improving, throw the pen aside, and try to make a speech *impromptu*. No doubt you will fail, but mark wherein you fail, and try again. The table and chairs will not jeer at you.

You may now make your first attempt to speak in public. If possible, *select* the occasion. Having planned your speech roughly in thought, put an *outline* of it upon paper containing only the subjects and order of their treatment. Trust to the impulse of the moment to find *words* wherein to express your thoughts; but let those thoughts be firmly fixed in your memory.

When your turn comes, no doubt you will be more or less nervous, *but go on*. Say something, however dislocated or unmeaning; anything is better than silence. And remember that he who has not the *courage to fail* may not hope to achieve success.

Whatever be the issue of the first trial, *try again*.

In the due order of learning, manner follows matter. This brings us to *delivery*.

The first consideration is to make yourself heard. To this end begin by measuring the space you are to fill. To do this it is not necessary to count and calculate by rule. Nature teaches

you. By a kind of instinct you proportion your voice to the distance from you of the person you address.

Do not be *too loud*; but speak *up*; speak *out*. Articulate clearly and deliberately. Lastly, study *variety* of tone, and of expression. There is nothing so dreary as monotony of voice.

Action is a necessary adjunct; a grace to be cultivated; a charm that adds greatly to the effect of a speech.

It is necessary that you should feel at ease, and look at ease. If you can learn to *stand still* becomingly, you will be almost sure to *move* gracefully. Begin quietly. Your action should rise with your emotions, and these should swell as you warm with your theme.

Shun uniformity, but do not "saw the air," as Hamlet terms it, nor be guilty of any inelegancies of action, as sticking your thumbs in your waistcoat. In short, having put yourself in the best position for the muscles to act, you may leave the manner of their action to the impulses of nature.

With these brief hints on the art of speaking we must dismiss the subject, leaving it to the student who desires further information to seek it in the admirable treatise from which our remarks hereon are, by permission, wholly taken.

MUTUAL CORRESPONDENCE.—Some advantage may also be gained by articulated clerks joining these societies, as they, like debating societies, tend to produce greater exertion; but they have the same drawback, viz., confining the student's attention too much to individual points, and they are without any other of the advantages attending debating societies. We are afraid they will hardly repay the student if he gives too much attention to them; and, indeed, we have known clerks merely copy their answers out of text-books, without giving the subject more trouble. Such a course of proceeding must necessarily be a mere waste of time.

COPYING PRECEDENTS.—By copying precedents, we mean transcribing various forms of conveyances and pleadings from text-books, and from forms which come before the clerk in practice. This system has its advocates and opponents. Mr. Lee thinks "that every hour employed in copying precedents, *elsewhere existing in print*, is an hour *lost*, but which might have been usefully employed in acquiring the principles on which those

precedents were originally framed." (a) Mr. Warren, although condemning the practice if carried too far, says: "Nothing can be more desirable than for the student to copy out a few *good* precedents, judiciously selected, with due reflection upon what he is doing, and constant reference to the rules and principles upon which they are framed. Three or four precedents a week *thus* copied will be of great service to the student; not only as tending to fix in his mind the rules of law, but to assist him hereafter in the construction of [conveyances] and pleadings in the course of business. He cannot go to greater extent in copying precedents than this, without uselessly encroaching on his valuable time, and degrading himself into a kind of copying clerk." (b)

We agree with Mr. Warren. In copying precedents, the articulated clerk should make every endeavour to understand their application, and the rules of law by which they are governed; otherwise he will derive no further benefit than does any mere engrossing clerk in the office; and it is well known that a copying clerk, who never reads or studies, remains a copying clerk, a mere machine, to the end of his days. It is often said that the clerk wants the precedents for his own use when he practises for himself. This, however, is a poor excuse, as valuable precedents may now be purchased for a very small sum.

In drawing your drafts it is a good plan to sketch an outline of the work to be done. Thus, suppose you are about to draw a will for (say) Mr. James Smith, the following would greatly assist:

Testator	{ James Smith, of 21, Piccadilly, Gentleman.
Household furniture, plate, linen, china, books, &c., &c., and an annuity of 100 <i>l.</i> per annum, charged upon estate at Croydon, hereafter devised to son William	{ To wife, she giving up her claim to dower out of estates of inheritance.
£2000	{ To daughter Harriet, to be settled to her separate use.
Freehold estate, at Croydon, Surrey	{ To testator's eldest son William, in fee.

(a) Lee's Dict. Pract.

(b) Warren's Law Studies, p. 860, 2nd edit.

Freehold house, testator now resides in, situated in Piccadilly, also leasehold house, 30, Fleet- street	}	To testator's second son, Henry.
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And continue till all specific bequests and devises are made, and then proceed to dispose of residue, &c. :—

Residue	{	To sons William and Henry, absolutely (or, as case may be).
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Executors	{	Son William and George Smith, of 29, Russell-square.
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This may be done when the testator gives his instructions for his will, and it is a good plan to get the testator to sign the outline made, as it will prevent any doubt as to what the testator's instructions really were, or his denying them at any future period. With the above before him, also, the student will set about his work with a clear idea as to what he is going to do. And this plan may be adopted with any other instrument transferring property real or personal.

CHAPTER V.

SUBJECTS AND BOOKS TO BE READ AND STUDIED FOR THE INTERMEDIATE, THE FINAL, AND FOR THE HONOURS EXAMINATIONS, ETC.

THE subjects and text-books to be studied for the Intermediate Examination are chosen by the examiners, and vary from time to time : (see *post*, ch. 6.)

The subjects to be studied for the Final Examination are also chosen by the examiners, but do not vary ; no text-books are, however, named by them for this examination. The subjects are : (1) on the principles and practice of the common law ; (2) on the principles and practice of equity ; (3) on the principles and practice of the law of real property and conveyancing ; (4) on bankruptcy ; (5) on criminal law of magistrates' practice ; (6) on the law and practice of the Probate, Divorce, and Admiralty Division of the High Court, and ecclesiastical law and practice.

Subjects numbered 1, 2, and 3, are the compulsory branches, candidates answering in departments numbered 4, 5, and 6, will, however, have their answers taken into consideration in summing up the merit of their general examination. They must also be taken up for the honours examination : (see *post*, ch. 7.)

SECTION I.

COMMON LAW.

"The common law," says Warren, "was feeble and narrow at first ; but, expanding with the exigencies of society, and with the progress of knowledge and refinement, it has at length become a remarkably complex and intricate system, presenting a singular combination of the strict principles of the old feudal law, with elegant reasonings of public and commercial jurisprudence, which are so universally admired for their general equity."(a)

(a) Warren's Law Studies, p. 398, 2nd edit.

The meaning of the term "common law" is ambiguous, even amongst lawyers themselves, it being used in several senses; sometimes as contra-distinguished from the statute law, sometimes from the civil and canon laws, and especially from equity.(a)

It is, however, termed the "*lex non scripta*," and is generally distinguished as that portion of our laws which has obtained its force by usage or custom; but Lord Hale, in his "History of the Common Law," states that much of what is now termed common law had its origin in Parliamentary enactments, which are not now extant, or, if extant, were made before the time of legal memory, which is before the reign of Richard I.; but this view is doubted by Mr. Hallam in his "Middle Ages." It is also generally applied to that portion of the law which is administered in the Common Law Divisions of the High Court.

The common law, even before the operation of the Judicature Act, 1873, covered a wide field, and included matters arising from the detention of debt; from a trespass, which may be either to a man's person, or his goods, or his lands; from a conversion of goods; from a libel or slander; from fraudulent misrepresentation; from an injury to a party's incorporeal rights; from an excessive or wrongful distress; from use and occupation; from false imprisonment; from a private nuisance, or a public one, from which a particular injury has arisen to the party, &c.

But all these must have arisen upon legal grounds; for it was a fundamental rule that courts of law took cognisance of legal rights only. Now, however, when a matter is properly cognisable in a court of law, it is immaterial whether it arises on legal or equitable grounds.(b)

The former courts are, by the Judicature Act of 1873, grouped together under a new name. We have now one Supreme Court of Judicature, divided into two great parts—first, the High Court of Justice, and, secondly, the Court of Appeal.

The divisions of the High Court of Justice at present (c) are, (1) the Chancery Division; (2) the Queen's Bench Division; (3) the Common Pleas Division; (4) the Exchequer Division; and (5) the Probate, Divorce, and Admiralty Division—the latter division comprising, in reality, three separate courts.

(a) See hereon Holth. Law Dict. 2nd edit. (b) 36 & 37 Vict. c. 66, s. 24.

(c) It is proposed to fuse the three Common Law Divisions into one, to be called the Queen's Bench Division, of which the Lord Chief Justice is to be president.

The *personnel* of the Queen's Bench, the Common Pleas, and the Exchequer Divisions consists of a chief judge, and four, or more, puisne judges. There are also other officers attached to these courts, the most important of whom are the masters.

Although the different divisions of the High Court have, as a rule, a concurrent jurisdiction over civil causes (gained, however, originally by the Court of Queen's Bench and Exchequer of Pleas by means of fictions), there are still cases in which they possess a separate jurisdiction, derived from their original and exclusive powers. Thus the Queen's Bench Division has the exclusive right to superintend inferior tribunals. The Common Pleas Division has exclusive jurisdiction in acknowledgments of deeds by married women, and in hearing appeals from revising barristers' courts; the Exchequer Division has exclusive authority over revenue matters; and the Chancery Division has, by the Judicature Act, certain specified matters still continued within its exclusive jurisdiction.^(a)

The Courts of *Nisi Prius* are such as are held for the trial of issues of fact before a jury and presiding judge; or before a judge without jury. The origin and history of these courts may be thus briefly stated. There was a sort of real action called an *assize*, which was tried in the very county in which the land in question lay, by judges holding the king's commission for that purpose, and who were styled *justices of assize*.

The statute 13 Ed. 1, c. 30, usually termed the Statute of *Nisi Prius*, therefore enacted that these justices of assize should try other issues, return the verdicts into the court above, and, in order to enable them to do so, the old writ of *venire* (now abolished) was altered, and, instead of ordering the sheriff to return the jurors to the court at *Westminster*, he was ordered to bring them to Westminster on a certain day, *nisi prius*, i.e., unless before that day the justices of assize came into the county; for then the statute rendered it his duty to return the jury, not to the court, but before the justices of assize. Hence it is that judges are said to sit at *nisi prius*, and trials to take place at the *assizes*; though the real actions of assize long ago became obsolete, and are now altogether abolished by stat. 3 & 4 Will. 4, c. 27. And see 36 & 37 Vict. c. 66, sect. 16.

The rules and practice in the Common Law Divisions of the High Court are now the same; and, as before stated, they

(a) 36 & 37 Vict. c. 66, sects. 34, 42.

have concurrent jurisdiction in all personal actions. The principal proceedings in an action are the following:—A writ of summons is issued, and a copy thereof served personally upon the defendant; if, however, the defendant cannot be personally served, the writ must be brought to his knowledge, and upon an affidavit of the facts, leave will be given by a judge at chambers to proceed as if personal service had been effected. After the defendant is served, he should appear within eight days from the day of service; and, when he does so, he gives notice thereof to the plaintiff, together with a duplicate memorandum of appearance, and, if the cause be not such that he may be called upon to obtain leave to defend, he should state whether he requires a statement of the plaintiff's claim to be delivered. If this be requested, the pleadings commence, the first being the statement of claim, which the plaintiff must deliver within six weeks from the defendant's appearance. It must contain a concise narrative of the facts on which the plaintiff relies, but not any evidence, and concludes by asking for the relief the plaintiff requires, which, as before stated, may now be either legal or equitable.

The next step is the defendant's answer, called a statement of defence, which must be delivered within eight days, and may set up any counter-claim which the defendant may have against the plaintiff, if it is of such a nature that it can be tried with the plaintiff's claim.

The statement of defence having been delivered, the plaintiff must reply within three weeks, and issue is then usually joined, and the pleadings are at an end.

The plaintiff, with his reply, or within six weeks of the close of the pleadings, gives notice of trial, specifying the mode of trial. If the plaintiff neglects to give this notice, the defendant may do so, or apply to have the cause dismissed for want of prosecution. After notice of trial has been given, either party may enter the action or issues for trial. The party doing so must leave with the officer two copies of the pleadings in the action (written, or printed, as the rules of the court may require), one of which is for the use of the judge. This was formerly termed the *nisi prius* record. Ten days are full notice, and four days short notice, of trial.

The briefs are also prepared, and delivered to counsel, and consultations appointed and attended; the witnesses are at the proper time served with subpoenas to attend the trial for the

purpose of giving evidence ; and notices to inspect and admit, and produce documents, are also given.

When the time of trial comes the jury (if one) are sworn, and the cause tried in due course, and a verdict given for plaintiff or defendant, or plaintiff is nonsuited.

After verdict the judge usually directs judgment to be entered for the successful party. After this is done, the parties attend before the master, and the costs are taxed, and, if necessary, the successful party enforces his judgment by execution. The ordinary writs of execution are *fiert facias*, whereby the debtor's goods and chattels are taken ; and *elegit*, whereby his goods and chattels, lands and tenements, &c., may be taken.

We have now stated the ordinary steps in an action when the cause tried is one of fact, but there are generally many other interlocutory applications occurring in the course of a suit, such as applications for further time to plead, for delivery of particulars of demand or set-off, &c., and these applications are made to a judge at chambers on summons.

If the issue be one of law raised by *demurrer*, a demurrer book is made up containing so much of the pleadings as are required to show the points of argument, and the demurrer is then entered, and notice given to the other side. On the day appointed it is duly argued before the court, which afterwards delivers its judgment.

Having briefly traced the history of the common law and its courts, we will proceed to give a list of text-books and statutes to be studied for the intermediate and final examinations, as also for honours, in this branch of the law.

BOOKS TO BE READ.—As we have before stated, principles should always precede practice ; therefore, the student must first turn his attention to works which treat of the principles of the law.

1. *For the Intermediate Examination.*—We commence by giving a list of the books to be read as a groundwork for the intermediate examination. For it must be remembered the examiners only give the names of the books chosen for this examination in the month of July of the year preceding it, and if a student wishes to present himself for examination in the January following this leaves but six months for preparation, a period much too brief.

As soon as the clerk is articulated, then, he cannot do better

than read in vol. 2 of Stephen's Commentaries, book 2, part 2, chapters 4 and 5, being the law "of title by gift and assignment," and "of title by contract," respectively; and, in the same work, vol. 3, book 5, chapters 1, 5, 6, 7, 9, and 10. This done, the student may proceed to the perusal of Chitty on Contracts. These works will be sufficient in this branch until the examiners make their selection of books, to which the student must then turn his attention: (see *post*, ch. 6.)

2. *For a pass for the Final Examination.* — The intermediate examination having been passed, the articulated clerk should re-peruse the works we have already enumerated, and then read Broom's Commentaries on the Common Law,^(a) omitting the chapters on criminal law, if he does not intend to study that branch of the law. The book is a very readable one, and contains a large amount of information on the subjects of which it treats — both contracts and torts; as well as a sketch of the different courts of law, and the proceedings in an action.

After this the student may proceed to some work which treats exclusively on the practice of the common law, an insight into which he will have gained by a perusal of the chapters previously directed to be read in the third volume of Stephen's Commentaries, as also in Broom's Commentaries. A suitable work for this purpose is Foulke's Elementary View of the Proceedings in an Action, which is founded on Smith's Action at Law. For reference and occasional reading the student should have an edition of the Judicature Acts and the rules and orders thereon. The one by Mr. Wilson is an able work. He has had the assistance of Mr. Greenwood and Mr. Biddle in the preparation of the last edition of his work. There are also editions of these Acts by Mr. Charley, by Mr. Baxter and by other editors. The edition by Mr. Charley is the cheapest, the price being only 7s. 6d.

Some work on the Law of Landlord and Tenant should be read, and we recommend Redman and Lyon's Concise View on this subject.

These works carefully studied, the student should read the questions and answers in this branch of the law in Hallilay's Digest of the Examination Questions and Answers, and familiarise

(a) The student must not confound this work with Broom and Hadley's Commentaries on the Laws of England.

himself with their contents; also all statutes passed, and orders made, since the publication of the text-books possessed by a student must, of course, be read and noted in such books.

3. *For the Honours Examination.*—In addition to the works above specified, the student seeking honours should read Broom's Legal Maxims, Smith's Leading Cases on various Branches of the Law, and Tudor's Leading Cases on Mercantile and Maritime Law. After these, text books treating on particular branches of the law should be read: On Bills of Exchange, Notes and Cheques, Chalmer's Digest hereon will be found sufficient. On the law of Evidence, Mr. Powell's work is a suitable one.

The student must also have for reading and reference the following statutes:—The 4 Ann. c. 16, s. 19; the 21 Jac. 1, c. 16, the 3 & 4 Will. 4, cc. 27, 42, and the 37 & 38 Vict. c. 57 (Limitations of Actions); the 9 Geo. 4, c. 14 (Lord Tenterden's Act); 5 & 6 Will. 4, c. 41; and 8 & 9 Vict. c. 109 (Gaming, &c.); the 9 & 10 Vict. c. 95, the 13 & 14 Vict. c. 61, the 19 & 20 Vict. c. 108, and the 30 & 31 Vict. c. 142, the 38 & 39 Vict. cc. 50 and 90 (County Courts Acts); the 18 & 19 Vict. c. 111 (Bills of Lading); the 6 & 7 Vict. c. 85, the 14 & 15 Vict. c. 99, the 16 & 17 Vict. c. 83, the 32 & 33 Vict. c. 68, and the 42 & 43 Vict. c. 11 (Evidence Acts); the 19 & 20 Vict. c. 97 (Mercantile Law Amendment Act); the 26 & 27 Vict. c. 41, and the 41 & 42 Vict. c. 38 (Innkeepers Acts); the 26 & 27 Vict. c. 105 (An Act to Remove Restrictions on Bills and Notes); the 27 & 28 Vict. c. 95 (Accidents Compensation Act Amendment); the 28 & 29 Vict. c. 86 (Partnership Law Amendment Act); the 28 & 29 Vict. c. 94 (Carriers Law Amendment Act); the 32 & 33 Vict. c. 46 (Debts of Deceased Persons Act); the 32 & 33 Vict. c. 62, and the 41 & 42 Vict. c. 54 (Debtors Acts); the 33 & 34 Vict. c. 35 (Apportionment Act, 1870); the 33 & 34 Vict. c. 93, and the 37 & 38 Vict. c. 50 (Married Women's Property Acts); the 34 & 35 Vict. c. 79 (Lodgers' Goods Protection Act); the 35 & 36 Vict. c. 39 (Naturalization Act); the 36 & 37 Vict. c. 66 (Supreme Court of Judicature Act 1873); the 37 & 38 Vict. c. 62 (Infants' Contract Act); 38 & 39 Vict. c. 91 (Registry of Trade Marks); the 39 & 40 Vict. c. 59 (Appellate Jurisdiction Act); c. 81 (Crossed Cheques Act); the 40 & 41 Vict. c. 26, and the 43 Vict. c. 19 (Companies Acts); the 41 Vict. c. 19 (Matrimonial Causes Act 1878); the 41 & 42 Vict. c. 31 (Bills of Sale Act 1878); c. 42 (Commutation of Tithes); the 43 & 44 Vict. c. 18 (Merchant Shipping); and c. 42 (Employers Liability Act 1880).

SECTION II.

THE LAWS OF REAL PROPERTY AND PRACTICE OF CONVEYANCING.

This branch of English jurisprudence, observes Mr. Serjeant Stephen, involves considerations of a very complex and subtle kind, and has been elaborated into a highly artificial system. (a) It may, however, be separated into two great divisions: tenures and estates, at which we can only glance in a brief and cursory manner.

The laws of real property, it is said, are founded on the feudal system.

This system appears to have been received in England in the reign of William the Conqueror, about which time the great survey, called Domesday Book, was made, and from thenceforth all the principal landholders submitted their lands to the yoke of the military tenures, became the king's vassals, and did homage and fealty to his person. Thus tenures were changed from *allodium* (holden of no one) to *feodum* (held of a superior).

These tenures were subject to *feuds*, of which there became, in course of time, two sorts, proper and improper; *aids*, of which there were three kinds; *reliefs*, *wardships*, and other burdensome exactions, which in their inception were uncertain and at the will of the lord, but became more fixed and less arbitrary by several statutory enactments.

The various kinds of tenures formerly existing seem to have been the following:—Knight's service, which was the most honourable, but was commuted into a money payment, called *escuage*, before it was abolished; free socage (freehold), which, though not so honourable, was more certain than the former; and villenage, of which latter there appears to have been two sorts, certain and uncertain, *i.e.*, the services rendered in the one case were more certain than in the other: from this tenure of villenage, which was of the basest and most uncertain kind, we are said to derive our copyholds. There were also tenures by cornage (to wind a horn, &c.), by grand serjeanty, and petty serjeanty. Borough English and gavelkind lands are not, and never were, distinct species of *tenure*, but are socage tenure, only by custom the lands descend to the youngest son in the first case, and to all the sons equally in the latter.

(a) Stephen's Commentaries, vol. i.

These tenures, with their burdensome accompaniments continued to exist till the reign of Charles II., when they were, by stat. 12 Car. 2, c. 24, all converted into free and common socage: the tenure of villenage was also preserved under the name of copyholds, in which are included customary freeholds, and lands held in ancient demesne. The tenure of grand serjeanty was (without its burdens and exactions) also retained; and *reliefs* were also preserved.

There is, however, another species of tenure in existence, and occasionally may be met with, viz., the *ecclesiastical* tenure of *frankalmoign*.

It is a fundamental principle of the laws of England, either derived from the system of feuds, or at least in accordance with it, that all land is supposed to be held, either mediately or immediately of the king, who is styled the lord paramount. Thus, if the king granted lands to B., and B. granted part of them to C., C. held of B., and B. of the king; B. being the mesne lord and tenant in *capite* to the king, and C. the tenant paravail. By the stat. *Quia Emptores* (18 Edw. 1), however, it was provided that after the passing of this Act all feoffments in *fee simple* should be so made that the feoffee should hold of the chief lord, by such services as his feoffor held. Therefore, after the passing of this Act, when lands in fee simple are conveyed, the purchaser holds them not of *his* feoffor as before the Act, but of the chief lord, who was such at the time the Act passed.

The estate or interest which a man may have in freeholds is either an estate of inheritance, or an estate not of inheritance.

Under the former are classed:—1. An estate in fee simple, for brevity styled in fee, as where lands are given to a man and *his heirs*, generally, without any restrictive words. 2. An estate tail, which arises on a gift to a man and the heirs of *his body*; and out of this estate a *base fee* is sometimes created. An estate in fee tail may be either *general*, as in the examples just given, or *special*, as where the heirs are to be begotten on the body of a particular wife; they may be also in tail male or tail female.

Of estates of freehold not of inheritance, there are:—1. Estates for life, which includes an estate *pur autre vie*, as where an estate is given to one to continue during the life of another. 2. An estate which a man holds as tenant in tail after possibility of issue extinct, which can only arise on the gift of an estate in special tail, and the wife from whose body the issue was to come is dead. 3. An estate in dower. 4. An estate by the curtesy of

England. We have already given some explanation of, and the incidents attached to, these estates, *ante* p. 29, to which the student is referred.

Estates less than freeholds are:—1. Estates for years. 2. Estates at will. 3. Estates at sufferance.

As to copyholds, as before shown, they are derived from the old tenure of *villanage*; these are not freeholds, but estates held by *copy of court roll at the will* of the lord of the manor, of which they form parcel. Being thus held at the will of the lord, and the services being formerly base and uncertain, they were not deemed worthy the gift of a freeman; but although still held at the will of the lord, it is now such a will as is conformable to the custom of the manor. The freehold and seisen of these estates are in the lord.

Customary freeholds are estates held according to the custom of the manor, but not at the will of the lord.

Lands held in ancient demesne were lands which, at the time of Edward the Confessor and William the Conqueror, were in the hands of the Crown, although afterwards granted out to private individuals.

Both these species of tenures are now included in the wider appellation of copyholds.

The estate or interest the person claims in these different kinds of property may be in possession, in reversion, or in remainder. The difference between the two latter being that a reversion is the remnant of an estate left in the grantor after a particular estate is granted out by him; as if A. be tenant in fee, and grants an estate to B. for life, B. will be the particular tenant, and the estate or interest remaining in A. will be a reversion. A remainder is an ulterior estate granted to some person to take effect after the determination of some particular estate, both estates being created at the same time; as if A., being tenant in fee, grants an estate to B. for life, remainder to C. in fee, here C. has an estate in remainder.

Remainders are of two kinds, vested and contingent. The example just given shows a vested remainder. A contingent remainder is where the ulterior estate is limited either to an uncertain person or upon an uncertain event.

The owner's estate may be either *legal* or *equitable*. The former gives him the right to possession and ownership at law; the latter gives him the beneficial ownership in equity, but is not for most purposes noticed at law. Therefore, if A. have the

legal estate. and B. the equitable, law gives A. the possession and ownership, but equity compels him to exercise such possession for the benefit of B. At least, such was the distinction before the operation of the Judicature Act, 1873. Since then, every judge of the Supreme Court is to give full effect to all estates, &c., both legal and equitable. Trusts, however, must still be administered in equity.

OF THE ALIENATION OF REAL ESTATES.—Prior to the reign of Henry VIII. an estate in fee simple was usually transferred from one person to another by the delivery of some symbol of possession (as a turf or wand), upon the land, attended with apt words. This mode of conveyancing was called a *feoffment*. It was by the Statute of Frauds (29 Car. 2, c. 3) required to be put into writing, (a) the livery of seisin being still necessary, of which there are two kinds, namely, a livery in *deed*, and a livery in *law*. The effect of a feoffment was always to convey some estate of *freehold*.

This mode of conveyance was used for transferring estate of freehold (except estates tail and dower, of which more hereafter) till the reign of Henry VIII., and, as before stated, in that reign a new mode of conveyance was discovered, by means of the Statute of Uses: (27 Hen. 8, c. 10.)

Before this time the Courts of Chancery had begun to exercise jurisdiction over land, and to compel the enforcement of *trusts*, and had formed themselves into a regular system relating to equitable estates. Thus, if a feoffment were made to A. and his heirs *to the use of* B. and his heirs, equity compelled A. to hold the legal estate for B.'s benefit, whom they considered the real owner. So if A. had agreed with B. to sell, and B. to purchase A.'s land, and B. paid the price, equity made A. hold the land *to the use of* B., as in the last case.

This doctrine of uses was introduced by the monks in order to evade the Statutes of Mortmain, for although uses were recognised in equity, at *law* they were considered a nonentity. By a statute of Rich. 2, however, uses were declared to be within the Statutes of Mortmain. In course of time great evils resulted from this separation of the real and ostensible ownership, and so great was this felt that the Legislature was called in to put a stop to it, and the 27 Hen. 8, c. 10, accordingly enacts, that where any person or persons stand *seised* of any lands, &c.,

(a) The 8 & 9 Vict. c. 106, s. 3, now requires a feoffment to be by deed.

to the use, &c., of any other person or persons, &c., such person or persons that have such use, &c., shall thenceforth stand and be seised in lawful seisin and possession of and in the same land, &c., to all intent and purposes in the law, and in such estates as they had or shall have in the use, &c. Thus does the statute turn the use into an estate in possession.

By means of this statute a man could get the legal and equitable interest in real property without any livery of seisin or formality of any kind, and without a deed; for, as before stated, if one agreed to sell, and another to purchase, and the price was paid, the seller stood seised to the use of the buyer, and this use the Statute of Uses turned into an estate in possession, which mode of conveyance was termed a *bargain and sale*. This was felt to be an evil, the stat. 27 Hen. 8, c. 16 (called the Statute of Enrolment), therefore enacted that all bargains and sales of *freeholds* should be by deed, and enrolled within six months after execution. But this Act does not require a bargain and sale of *leaseholds* to be enrolled. Therefore, our ancestors, by means of the Statute of Uses, found out a mode of conveyance without the necessity of an actual entry, and without enrolment. The mode was thus: the lands were bargained and sold to the use of the purchaser for a year, the Statute of Uses turned the use into an estate in possession without the necessity of entry, and, being only a chattel interest, it did not require enrolment. The purchaser being now in possession, was in a position to receive a release of the reversion and freehold (for *incorporeal* hereditaments were always said to lie in *grant*, and were conveyed by deed), which was accordingly done by another deed, and these two instruments were called a *lease* and *release*, forming, in point of fact, but one deed, and was the mode in general use for conveying real property till the year 1841. In that year the 4 & 5 Vict. c. 21, enacted that any deed of release, if purporting to be made *in pursuance of the Act*, should be as effectual for the conveyance of freehold estates as a lease and release by the same parties.

By a still later Act (8 & 9 Vict. c. 106) it is declared that all corporeal tenements and hereditaments shall, as regards the conveyance of the immediate freehold thereof, be deemed to lie in *grant* as well as in livery. So that freeholds may now be conveyed by deed of grant only; and by the 37 & 38 Vict. c. 78, further facilities have been made for the transfer of land.

And by the 25 & 26 Vict. c. 53 (Land Transfer Act) freeholds

and certain leaseholds of freeholds may be registered, and an indefeasible title obtained, in which case they may be conveyed or dealt with: (1) by a statutory disposition in the forms prescribed by this Act; (2) by indorsement on the land certificate; (3) by any deed or instrument by which such lands if *not* registered might be conveyed or dealt with.

Copyholds are transferred *inter vivos*, by surrender and admittance, accompanied by a deed of covenants.

The mode of barring estates tail and dower, and conveying the interests of married women in lands, was formerly by fine or recovery. Fines and recoveries were in their nature fictitious actions, the former of which were always compromised, and were thus called fines, because they put an end to all suits and controversies; the latter, however, were carried through all stages to judgment and execution.^(a) They were always accompanied by deeds either leading or declaring uses.

Fines and recoveries are now abolished, and a simple deed enrolled in Chancery is substituted as well for a fine as a recovery by the stat. 3 & 4 Will. 4, c. 74.

An estate tail in copyholds is barred by surrender; if, however, the estate is an equitable one, it may be barred either by surrender or deed.

OF ALIENATION BY WILL.—Before the Norman Conquest both real and personal estate were devisable by will. When, however, the Normans had established their feudal tenures, they would not allow *lands* to be devised by will, and this constraint continued till the reign of Henry VIII. In this reign the stat. 32 Hen. 8, c. 1, was passed (explained by 34 Hen. 8, c. 5), called the Statute of Wills, which enabled all persons, except infants, *feme coverts*, idiots, and persons *non compos mentis*, to devise *two-thirds* of their lands held in knight's service and the whole of those held in socage; and as the stat. 12 Car. 2, c. 24, abolished the military tenures, &c., this power was as a natural consequence extended to all freehold estates in fee simple.

Previously, however, to either of these enactments, and before the Statute of Uses, a *use* in lands might have been devised by will, and this devise equity would have enforced.

The only form required by the statute of Hen. 8 was writing. The next statutory enactment respecting wills was the 29 Car. 2,

^(a) For further information, see 1 Steph. Com.; Will. Real Property; Burton's Comp.

c. 3 (Statute of Frauds), which required all wills of lands to be in writing, signed by the testator, or some other person in his presence, and by his direction, which will was to be attested by *three* or more credible witnesses, in the presence of the testator. Publication was also required.

A person had always the power of disposing of his personal estate by will, and previous to the Statute of Frauds no formality whatever was requisite. By this statute, however, it was declared that no parol or nuncupative will should be good where the estate bequeathed exceeded the value of 30*l.*, but still anything in writing was sufficient, no attestation or other formality being necessary.

Thus the law stood at the time of the passing of the 7 Will. 4 & 1 Vict. c. 26, which gave the fullest powers of testamentary disposition, enabling testators (except persons under twenty-one, *feme covert*s, and those *non compos mentis*) to dispose of every species of property to which they are entitled at their death.

The same formalities are required as to wills passing real or personal estate; that is, the will must be signed at the foot or end by the testator, or by some other person in his presence, and by his direction; and he must either make, or acknowledge such signature to be his, in the presence of *two* or more witnesses present at the same time, who must attest and subscribe the will in the presence of the testator; but no form of attestation is necessary. The words "at the foot or end" caused many wills to be rendered void on account of their not being signed strictly at the foot or end. The stat. 15 & 16 Vict. c. 24, was, therefore, passed, which gives a far more liberal construction to the signature, but declares that no will shall be good if the signature precede the will.

BOOKS TO BE READ.—Principles in this branch of the law should essentially precede practice.

1. *For the Intermediate Examination*.—As a groundwork on the laws of real property for this examination the student should read the whole of the 1st vol. of Stephen's Commentaries, or Williams on the Principles of the Law of Real Property. Either of these works will be sufficient until the examiners make known the works selected to be studied by candidates for this examination (see post, ch. 6).

2. *For a Pass for the Final Examination*.—If Williams on Real Property has not been read for the Intermediate Examination, it should be procured and diligently studied. The student

having thus obtained a thorough knowledge of the principles of the law of real property from this work and the 1st vol. of Stephen's Commentaries, he may proceed to read the dissertations on the law and practice of conveyance in Prideaux's Precedents in Conveyancing. The price of the ninth edition of this work is 3*l.* 10*s.* It will, however, be as useful after as before the examination; or instead of this work, Dart's Law of Vendors and Purchasers may be read. On the law of Landlord and Tenant a text-book is recommended, *ante*, p. 47. Finally the questions and answers in the conveyancing branch of Hallilay's Digest of Examination Questions should be read; as also any new statutes, orders, &c., passed or made since the publication of the editions of the text books the student has studied.

3. *For the Honours Examination.*—In addition to the works above specified for study, the student who wishes to obtain honours at his examination should read Smith's Compendium of the Law of Real and Personal Property. The fifth edition was published in 1877; its price is 2*l.* 2*s.* It will be found a most useful work as an advanced text book on conveyancing. After this Tudor's Leading Cases on the Law of Real Property and Conveyancing should follow. On the law of wills the notes to Hayes and Jarman's Concise Forms of Wills will be found to contain much and valuable information.

The student seeking honours must also pay attention to the following statutes:—27 Hen. 8, c. 10 (Statute of Uses); 29 Car. 2, c. 3 (Statute of Frauds); 9 Geo. 2, c. 36 (Charities); 39 & 40 Geo. 3, c. 98 (Accumulations); 3 & 4 Will. 4, c. 27, and 37 & 38 Vict. c. 57 (Limitations of Real Actions); 3 & 4 Will. 4, c. 74 (Fines and Recoveries); 3 & 4 Will. 4, c. 104 (Debts Act), c. 105 (Dower), c. 106 (Descents); 1 Vict. c. 26 (Wills Act Amendment); the 1 & 2 Vict. c. 110, ss. 13, 18, and 19; the 2 & 3 Vict. c. 11; the 3 & 4 Vict. c. 82, s. 2; the 18 & 19 Vict. c. 15; the 23 & 24 Vict. c. 38, ss. 1 to 3; and the 27 & 28 Vict. c. 112 (all Acts relating to Registration of Judgments); the 8 & 9 Vict. c. 18 (Lands Clauses Consolidation Act), the 8 & 9 Vict. c. 106 (Real Property Amendment Act); the 16 & 17 Vict. c. 51 (Succession Duties Act); the 17 & 18 Vict. c. 113, 30 & 31 Vict. c. 69, and the 40 & 41 Vict. c. 34 (all as to exoneration of charges); the 18 & 19 Vict. c. 43 (Infants' Settlements); the 20 & 21 Vict. c. 57 (Reversionary Interests of Married Women); the 22 & 23 Vict. c. 35, the 23 & 24 Vict. c. 38 (Property Law Amendment Acts); the 23 & 24 Vict. c.

145 (Trustees and Mortgagees Act, 1860); the 25 & 26 Vict. c. 53 (Land Registration Act); the 30 & 31 Vict. c. 48 (the Sale of Land by Auction Act); the 31 Vict. c. 4 (Sale of Reversions Act); the 31 & 32 Vict. c. 40 and the 39 & 40 c. 17 (Partition Acts); the 33 & 34 Vict. c. 35 (Apportionment Act); the 33 & 34 Vict. c. 93, and the 37 & 38 Vict. c. 50 (Married Women's Property Acts); the 37 & 38 Vict. c. 37 (Illusory Appointments); c. 62 (Infants' Contracts Act); c. 78 (Vendors and Purchasers Act); the 40 & 41 Vict. c. 33 (Contingent Remainders Act); the 40 & 41 Vict. c. 18 (Settled Estates Act, 1877); the 41 & 42 Vict. c. 31 (Bills of Sale Act); c. 42 (Commutation of Tithes Act).

SECTION III.

EQUITY.

The origin of equity is involved in some obscurity, and there are conflicting opinions upon the subject. (a) Mr. Stephen, in his Commentaries, gives the following history: "The origin of equity may be stated as follows. The ancient structure of our national jurisprudence (whatever might be its merits in other particulars) was singularly defective in compass and enlargement of view. It took no account of several subjects for which it is the duty of civilised judicature to provide, and to others it applied maxims too strict and unbending to satisfy the notions of justice in an advanced state of society. Its judicial remedies were also in some cases of a cumbrous and inconvenient character. For these evils the progressive introduction of new remedial laws by act of the Legislature would seem to have been the natural remedy; but the course of things was different. Owing perhaps to some peculiar aversions in the early genius of the country from change in its legal institutions, the law administered between subject and subject in the ancient courts of the realm was allowed to remain for a long period of our history with very little alteration of a fundamental kind. But new courts were, on the other hand, gradually established with a collateral, and, in some sense, an usurped jurisdiction, in which cognisance was taken of those subjects which the proper law of England had overlooked or insufficiently regulated, relief given from the consequences of some of its harsher doctrines, and the defects of its judicial

(a) See Story's Eq. Jur. c. 2, and authorities there referred to.

methods in certain cases supplied. These courts, having been at the outset chiefly resorted to for one of the particular purposes above enumerated, viz., the mitigation of the severity of the common law,(a) as applied to particular cases, the whole system and rules as there administered obtained (without much propriety, but in reference to the liberal principle of interpretation applied by jurists to the interpretation of positive laws) the appellation of *equity*, and soon began to hold that divided empire with the more ancient or common law which it still retains."(b)

Equity is defined to be a portion of justice or natural equity, not embodied in legislative enactments, or in the rules of the common law, yet modified with a due regard thereto, and administered where courts of law cannot, or originally did not, clearly afford any relief, or at all events adequate relief, at least not without circuitry of action or multiplicity of suits, or where they cannot direct such restrictions, adjustments, compensations, or conditions as may be necessary, in order to take a due care of the rights of all who are interested in the property in litigation.(c)

The learned Selden said: "For law we have a measure, and know what to trust to. Equity is according to the conscience of him that is Chancellor, and as that is large or narrow so is equity." But, however true this opinion may have been when uttered, it is not a true description of modern equity, "for there are certain principles upon which courts of equity act which are well settled. The cases which occur are various, but they are decided on fixed principles. Courts of equity have in this respect no more discretionary power than courts of law. They decide new cases as they arise by the principles on which former cases have been decided, and may thus illustrate or enlarge the operation of those principles, but the principles are as fixed and certain as the principles on which the courts of common law proceed."(d)

The essential difference between law and equity, even since the Judicature Act, 1873, consists in the subjects over which they exercise jurisdiction, and the kind of relief they administer.

The principal heads of equity jurisprudence are—accident, mistake, frauds, uses and trusts, administration of the estates of

(a) Bacon says, "Chancery is ordained to supply the law, not to subvert the law."

(b) Introductory Chapter.

(c) See Smith's Manual of Equity.

(d) Per Lord Redesdale, in *Bond v. Hopkins*.

deceased persons, specific performance of agreements, injunctions to restrain injuries to property, election, the redemption and foreclosure of mortgages, the dissolution of partnerships and taking an account of their dealings, partition, perpetuating the testimony of witnesses when there is no actual litigation, &c. (a)

The Chancery Division of the High Court consists of the Lord Chancellor as president, and the different branches of the court are: the Court of the Master of the Rolls, and the courts of the three Vice-Chancellors, and of one other judge. (b)

There are also courts of equity in the Counties Palatine, in the two Universities, and in the City of London, but their jurisdiction is limited. So the County Courts have an equitable jurisdiction up to 500*l.* in certain cases.

And the 36 & 37 Vict. c. 66, expressly enacts that, subject to certain provisions, when a plaintiff claims an equitable estate or right, or relief on equitable grounds, he is to have the same remedy given him by the High Court or Court of Appeal, or any judge thereof, as the Court of Chancery, when it existed, would have given him: (sect. 24, sub-sect. 1, *et ante*, p. 52.)

An appeal lies from the Vice-Chancellors and the other equity judge, and the Master of the Rolls, to the Court of Appeal, and from thence to the House of Lords. The decision of the House of Lords is final.

The mode of instituting proceedings in the Court of Chancery seems in its inception to have been by petition, and in modern times, and up to the coming into force of the Judicature Acts, chiefly by bill and by information. Now, instead of these two latter modes, proceedings are to be commenced by action (c) as in the Common Law Divisions of the High Court; but as there are several points of difference between a common law and a chancery action we will now briefly detail the proceedings taken in the latter, as we have already given those taken in the former. The first step is the writ, but it must be marked with the name of one of the equity judges, to whose court the cause will be attached. The writ must be indorsed with particulars of claim, and served on the defendant. The defendant enters an appearance

(a) See *Benson v. Paul*, 27 L. T. Rep. 78; 17 & 18 Vict. c. 125; 23 & 24 Vict. c. 126; 36 & 37 Vict. c. 66, s. 34, sub-sect. 3.

(b) Mr. Justice Fry at present presides in this branch of the Chancery Division of the High Court.

(c) Proceedings may also be taken by petition, by summons, and by special case.

thereto in due time, and gives notice thereof, as at common law. The statement of claim by the plaintiff and the statement of defence by the defendant, and joinder of issue, are also similar to those which are used in an action in the Common Law Division of the High Court. Notice of trial must also be given and the cause entered; and copies of the pleadings left with the proper officer, as previously detailed in an action in the Common Law Division of the High Court: (see *ante*, p. 45.) Briefs are also prepared and delivered to counsel, and the usual consultations appointed and attended, and witnesses summoned by subpoenas.

The trial and evidence and subsequent proceedings, however, differ from those which take place in a trial in a Common Law Division of the High Court. In the latter a cause is usually heard before a judge and jury. A trial in the Chancery Division of the High Court is generally heard before a judge without the intervention of a jury; although the judge has the power to order a cause to be tried before a jury. However it appears to be settled that a trial by a jury in an action in the Chancery Division of the High Court cannot be heard before a judge thereof, but must be tried either on circuit or at the sittings for London or Middlesex before the sitting judge.

The evidence in actions in the Chancery Division of the High Court is given *vivâ voce* in court as in the Common Law Divisions, unless the court orders particular facts to be proved by affidavit; or the evidence of particular witnesses to be taken before an examiner. Evidence given on a motion, petition, or summons may, however, be given by affidavit, upon which the deponent may be cross-examined by order of the court.

When judgment is given by the court minutes thereof are drawn up by the registrar in the presence of the different solicitors of the parties, and if necessary settled by the judge himself. Usually also a decree in Chancery is, in the first instance, interlocutory, directing certain accounts to be taken or inquiries to be made, which is done in chambers by the judge's chief clerk, and when completed the chief clerk embodies the result in a certificate, and the cause then comes on for further consideration, and a final decree or judgment is made.

This judgment may, if necessary, be enforced by writs of attachment and sequestration.

BOOKS TO BE READ.—Works on the principles of equity must precede those on practice. And :—

1. *For the Intermediate Examination.*—As a preparation for this examination, so far as it may relate to equity, the student should study Haines' Outlines of Equity; as he will gather very little information of the principles of equity from a perusal of the chapter devoted to it in Stephen's Commentaries. After this the student must read the work on equity selected by the examiners for the Intermediate Examination. (a)

2. *For a Pass for the Final Examination.*—Haynes' Outlines having been read, the candidate for a pass should carefully study Smith's Manual of Equity Jurisprudence. This done, some work on the practice of the Chancery Division of the High Court must be read. For, as before shown, there are still points of difference between the proceedings in an action in a Common Law and the Chancery Division of the High Court of Justice. So the Chancery Division of the High Court has still an exclusive jurisdiction over several matters, as administration, trusts, &c., &c. Haynes' Chancery Practice will be sufficient hereon. The student may, after this, take up the questions and answers in the equity branch of Hallilay's Digest, and make the substance of the answers his own. All Acts passed and orders made since the publication of the text books the student has read must also be noted up.

3. *For the Honours Examination.*—The student seeking honours must, in addition to the books named above, read Snell's Principles of Equity and Tudor and White's Leading Cases in Equity. And as the examiners have at the Final Examination shown a tendency to put questions bearing on the law of joint-stock companies, some brief work on this branch should be used. Smith's Handy Book on this subject will, we think, be sufficient for examination purposes.

In addition the following statutes should be read :—the 10 & 11 Vict. c. 96, the 12 & 13 Vict. c. 74, the 13 & 14 Vict. c. 60, and the 15 & 16 Vict. c. 55 (Trustees Acts), the 13 & 14 Vict. c. 35, and sect. 14 of 23 & 24 Vict. c. 38 (Summary Administration of Deceased's Estates); the 21 & 22 Vict. c. 27 (as to awarding damages); the 31 Vict. c. 4 (Sale of Reversions); 31 & 32 Vict. c. 40, and the 39 & 40 Vict. c. 17 (Partition); the 32 & 33 Vict. c. 46 (Specialty and Simple Contract Debts);

(a) For the year 1881 the only work selected by the examiners to be studied for the Intermediate Examination is Stephen's Commentaries on the Laws of England (see *post*, ch. 6.)

the 43 Vict. c. 19 (the Companies Act 1880). Many of these statutes will be found in Morgan's Statutes and Orders. See also the list of statutes given in the section on conveyancing, *ante*, p. 56.

SECTION IV.

BANKRUPTCY.

Bankruptcy owes its origin to the legislator; the ancient common law had made no provision for it.

The objects of the bankrupt laws are, first, to protect an honest but unfortunate debtor from the grasping creditor; and, secondly, to distribute amongst the creditors equally what assets there may be. Thus the debtor becomes again free, and the creditors' interests are cared for.

The 32 & 33 Vict. c. 71, and rules made thereon, now govern the bankrupt laws.

The present Court of Bankruptcy consists of the London Bankruptcy Court (which still exists as a separate and independent Court) and the County Courts (except the metropolitan courts and some small County Courts excluded by the Lord Chancellor). The judge of the London court is styled the Chief Judge in Bankruptcy, and must be one of the judges of the High Court of Justice.

The judges of the County Courts, with jurisdiction in bankruptcy, have all the powers and jurisdiction of a judge of the Chancery Division of the High Court. The judges may, subject to the rules of court, delegate to the registrars of the court such of the powers vested in them as they may deem expedient, except the power of commitment for contempt of court.

An appeal lies from the County Courts to the Chief Judge, and from him to the Court of Appeal (the Lords Justices). By leave of the Lords Justices, an appeal lies from them to the House of Lords.

Before a person can be adjudged bankrupt, the petitioning creditor must show a sufficient debt; an act of bankruptcy committed within the preceding six months; and (if the person is a trader) a trading within the meaning of the bankruptcy laws. A sealed copy of the petition must be served on the debtor seven days before the day of hearing. Upon the day appointed the debtor may, having previously filed a notice of his intention, show cause against being adjudicated. If the debtor does not

appear, the creditor must prove the statements in the petition, and if he succeeds in establishing his case the court will make an order of adjudication. The order is advertised in the *London Gazette*, and, if the bankrupt resides in the country, also in a local paper.

A general meeting of creditors is then called, when the bankrupt attends, having filed a statement of his affairs. The creditors prove their debts, appoint a trustee (whose duty is chiefly to get in the bankrupt's estate), and frequently a committee of inspection.

A day is appointed for the bankrupt's examination in court, at which meeting the bankrupt is to be publicly examined on the statement produced at the first meeting. After passing this examination, and having discovered all his property, the bankrupt may apply for an order of discharge if his estate has paid a dividend of 10s. in the pound. He may also, at any time during the continuance of the bankruptcy, or at its close, make such application, with the assent of the creditors testified by a special resolution.

An undischarged bankrupt cannot be sued for any debt provable under the bankruptcy within three years after its close.

An order of discharge bars all debts provable under the bankruptcy unless incurred by fraud or breach of trust, and except Crown debts and the like. Crown debts are not discharged without the written consent of the Commissioners of the Treasury.

LIQUIDATION BY ARRANGEMENT.—If a debtor be unable to meet his engagements, he may present a petition to the court, supported by affidavit stating the facts, and desiring that proceedings may be taken for the liquidation of his affairs. A general meeting of creditors is summoned, when the creditors elect a chairman and prove their debts. They may then pass a special resolution that the affairs of the debtor are to be liquidated by arrangement and not in bankruptcy, and may appoint a trustee, with or without a committee of inspection; such resolution is carried by a majority in number and three-fourths in value of the creditors present, personally or by proxy, at the meeting, and voting on such resolution. The debtor must be present at this meeting to produce a statement of his affairs and answer any inquiries. The resolution must be registered. The duties of a trustee are similar to those in case of bankruptcy.

A resolution of the creditors is required for the debtor's discharge, which may be passed at the first, or some subsequent general meeting.

COMPOSITION WITH CREDITORS. — At the general meeting summoned as above mentioned, a majority in number representing three-fourths in value of the creditors assembled at such meeting, may pass an extraordinary resolution agreeing to accept a composition. The resolution must be filed. It must be confirmed by a majority in number and value of the creditors assembled at a subsequent general meeting, held at an interval of not less than seven nor more than fourteen days from the date of the first meeting. The second meeting is summoned in the same manner as the first meeting.

The provisions of the composition bind all creditors named in the statement produced to the meetings at which the resolutions were passed, but will not affect the rights of other creditors.

BOOKS TO BE READ. — For the student, Smith's *Manual of Bankruptcy* and Purkis's *Student's Guide to Bankruptcy* are appropriate books. But for the practitioner Robson's is a comprehensive work. Mr. Salaman's treatise on liquidation by arrangement and composition will be found very useful.

SECTION V.

CRIMINAL LAW.

The knowledge of this branch of jurisprudence teaches the nature, extent, and degrees of every crime, and its adequate and necessary penalty.

A crime is the violation of a right when considered in reference to the evil tendency of such violation as regards the community at large. (a)

The distinction between crimes and civil injuries seems to be this: that private wrongs or civil injuries are an infringement or privation of the civil rights which belong to individuals, simply as individuals; public wrongs or crimes are a violation of the same rights, considered in reference to their effect on the community in its aggregate capacity.

(a) See Steph. Com., vol. iv.

Crimes may be divided into three kinds :

1. Treasons.
2. Felonies.
3. Misdemeanors.

Treason itself, says Coke, was anciently comprised under the name of felony ; and, strictly speaking, all treasons are felonies, though all felonies are not treasons.

Treason is treachery against the sovereign or liege lord, and is the highest civil crime, which, considered as a member of the community, any man can possibly commit.

Felony, in the general acceptance of our English law, comprises every species of crime which occasioned at common law a forfeiture of lands and goods. The 33 & 34 Vict. c. 23, enacts that no confession, verdict, &c., of or for any treason or felony, or *felo de se*, is to cause any forfeiture not being consequent upon outlawry.

The term *misdemeanor* is, properly speaking, synonymous with that of crime, though in common usage the word is made to denote such crimes as do not amount to felonies.(a)

Crimes may be divided into :—

1. Offences against the person.
2. Offences against property.
3. Offences against the Government.
4. Offences against religion.
5. Offences against the law of nations.
6. Offences against public justice.
7. Offences against the public peace.
8. Offences against public trade.
9. Offences against the public health, police, or economy.

There are certain persons who are exempted from punishment for crime arising from the want or defect in *will*. There are three divisions in which the will does not join with the act.

1. Where there is a defect of understanding, as infancy or lunacy. 2. Where there is understanding and will sufficient residing in the party, but not called forth and exerted at the time of the action done, which is the case of all offences committed by chance or ignorance. Here the will sits neuter, and neither concurs with the act nor disagrees with it. 3. Where the action is constrained by some outward force and violence. Here the will counteracts the deed, and is so far from concurring

(a) See Steph. Com., vol. iv.

with, that it loathes and disagrees from, what the man is obliged to perform. (a)

It is a maxim of the criminal law, as well as the civil, that *ignorantia juris, quod quisque tenetur scire, neminem excusat*.

The courts possessing original criminal jurisdiction are, the House of Lords, the Crown side of the Queen's Bench Division of the High Court, and the Courts of Assizes, the Central Criminal Court, and the several Courts of Quarter, Special, and Petty Sessions. The Courts of Appeal are the Queen's Bench, and the Court of Crown Cases Reserved.

The modes of taking proceedings are either *summary* before justices at petty sessions, by information and summons, or warrant; or they are *formal* by indictment.

The following is a sketch of the formal proceedings:—

When an indictable felony or misdemeanor has been committed, a bill of indictment may be preferred at the quarter sessions or assizes, without any preliminary hearing before a justice, except in the case of perjury, subornation of perjury, conspiracy, obtaining money or property by false pretences, keeping a gambling-house, and any indecent assault (unless any of these offences may be joined with the rest of the indictment, &c.) (b); but, although there is nothing to prevent this, it is a course very rarely taken; usually, before this is done, the offender is taken before a magistrate, with a view to his committal for trial. The mode of bringing the accused before a magistrate may be either by summons, or by arrest under a warrant, or by arrest without a warrant. At a convenient time the charge will be heard by the magistrate, and, before the accused is committed to trial or admitted to bail, such magistrate must, in the accused's presence, take a statement on oath or affirmation of those who know the facts and circumstances of the case, the accused being at liberty to cross-examine any witness produced against him, and the statement is to be put into writing, and, when so done, is to be read over to and signed by the witness, and also signed by the committing magistrate; and if at the trial of the accused it can be proved that any witness is dead, or unable to travel, these depositions may then be used.

When the depositions have been taken, the justice is bound to read, or cause them to be read, and say to the prisoner these

(a) See Steph. Com., vol. iv.

(b) See 22 & 23 Vict. c. 17; 30 & 31 Vict. c. 35.

words, or words to the following effect: "Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything, unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial." Any statement then made by the prisoner is taken down and put into writing, read over to and signed by the prisoner, unless he object to do so, and also signed by the magistrate; also, before the prisoner makes any statement, the magistrate must clearly give him to understand that he has nothing to hope from any promise of favour, and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of his guilt. The accused must also now be asked if he wishes to call witnesses.

The next step is to bind over the prosecutor and witnesses to prosecute and give evidence at the trial. The depositions and recognizances are then transmitted to the place where the prisoner is to be tried. Instead of committing the accused to prison, the magistrate may, in certain cases, admit him to bail.

The next proceeding is to prepare the brief for the prosecution, which contains the title of the court, and states the prosecution. The substance of the indictment follows; then comes the case and proofs. This brief is delivered to counsel.

The indictment is at the trial presented to the grand jury, who examine such witnesses as they think fit, and a majority, of twelve at least, either find what is called a "true bill," and so indorse the bill, or they ignore it, and indorse it with the words "no bill," or "not found."

This bill (with others) is taken into court, and delivered to the clerk of the peace, or his deputy, who, in the presence of the grand jury, announces the finding. Upon the bill being found, the prisoner, if out on bail, is called upon to surrender.

The indictment is then read over to the prisoner, and his plea is taken. If he pleads "guilty," the plea is recorded, and sentence may then be passed upon him. If he pleads "not guilty," which is the most usual plea,^(a) it is in like manner recorded, and the trial is proceeded with. A jury of twelve are

(a) The prisoner may plead "autrefois acquit," "autrefois attainé," "autrefois convict," or pardon. He may also object to the indictment, or to the jurisdiction of the court.

called over, any of whom the prisoner has a right to challenge, and, if not objected to, are sworn "to well and truly try," &c. The clerk of arraigns reads over the substance of the indictment, and then states the prisoner's plea, and directs the jury to inquire whether the prisoner be guilty or not guilty. The case for the Crown is opened, and the evidence given, the prisoner or his counsel having a right to cross-examine any or all of the witnesses. The prisoner then makes his defence, and, if he thinks fit, calls evidence, in which case the prosecutor is entitled to a reply. If the jury find the prisoner guilty, and there is no ground for a new trial, or no point of law reserved, the sentence follows.

BOOKS TO BE READ.—On crimes, the student may read that portion of the fourth volume of Stephen's "Commentaries," or Broom's "Commentaries," relating to the subject, afterwards Purkis' "Students' Guide to Criminal and Magisterial Law," may be read; and in addition, for practice, on magistrates' and sessions practice, Saunders' "Magistrates' Practice," or Oke's "Magistrates' Synopsis," are recommended; on evidence, Archbold's "Criminal Pleading and Evidence," by Bruce, will be found a most able treatise.

For the law relating to the Poor-laws, Archbold is recommended.

Medical Jurisprudence.

The study of medical jurisprudence should form part of the student's studies in this branch of the law.

The best text-book is Taylor.

SECTION VI.

THE DIVORCE, PROBATE, AND ADMIRALTY DIVISIONS OF THE HIGH COURT OF JUSTICE.

1. *The Divorce Court.*

The stat. 20 & 21 Vict. c. 25, which came into operation on the 1st of January, 1858, abolished the jurisdiction of the Ecclesiastical Courts over divorces *à mensâ et thoro*(a), suits of

(a) A divorce *à mensâ et thoro* literally means from bed and board. The marriage is, or rather was, not dissolved by this kind of a divorce, as was the case on a divorce *à vinculo matrimonii*.

nullity of marriage, suits for restitution of conjugal rights, and in all causes and matters matrimonial, except the granting of marriage licences; and that jurisdiction is now transferred to and vested in a court called The Court for Divorce and Matrimonial Causes, composed of certain of the existing judges and a judge-ordinary of its own, and is a division of the High Court of Justice. No decree for a divorce *à mensâ et thoro* is henceforth to be made; but in all cases where such decree might formerly have been pronounced, a decree for a judicial separation, having the same effect, is substituted. There are to be no more actions for *crim. con.* But the husband, either in a petition for a dissolution of marriage, or for judicial separation, or limited to the money object alone, may claim damages against the offender: and the claim made by such petition is to be heard and tried on the same principles as, and in a similar manner to, actions for criminal conversation; and the damages are in all cases to be assessed by the jury, the court, however, having power to direct in what manner they are to be paid or applied. It may direct, for instance, the whole or a part to be settled either on the children of the marriage, or as a provision for the maintenance of the wife; and when the fact at issue is established, the court has power to compel the offending party to pay the costs of the proceedings.

A sentence of judicial separation—which has the effect of a divorce *à mensâ et thoro*—may be obtained either by the husband or wife, on the ground of unfaithfulness, cruelty, or desertion without cause for two years and upwards. But if such separation has been obtained by a husband or a wife in the absence of the other, that other may present a petition for a reversal of the order, stating, for instance, that there was reasonable grounds for the alleged desertion, where desertion was the ground of the decree; and the court may order a reversal accordingly; but such reversal will not affect the rights of third parties, as persons who have dealt with the wife during the time that has elapsed between the decree for separation and its reversal. Applications for restitution of conjugal rights, or for judicial separation on any of the grounds before detailed, may be made either by husband or wife to the Court of Divorce; and where the application is by the wife, the judge may make an order for alimony—that is, an allowance to the wife in money.

A wife deserted by her husband may apply to a police magistrate, if one, or to justices in petty session, or to the Court of

Divorce, for an order to protect any money or property she may acquire by her own lawful industry, or which she may otherwise become possessed of after such desertion, against her husband or his creditors, or any person claiming under him; and, if the protecting order is made, her earnings and property shall belong to her as if she were a *feme sole*. But it is provided that when such order is made by a police magistrate, or justices at petty sessions, it must be entered within ten days afterwards with the registrar of the County Court within whose jurisdiction the wife is resident; and a power is also given to the husband, or any creditor or person claiming under him, to apply to the Court of Divorce, or to the magistrate or justices by whom such order was made, for its discharge. If the husband, or his creditors, or any person claiming under him, seizes, or continues to hold any property of the wife after notice of such order he shall be liable at the suit of the wife to restore the property, and also a sum double its value. And if any such order for protection be made, the wife is, during its continuance, to be and be deemed to have been, during such desertion, in the like position in all respects with regard to property and contracts, and suing and being sued, as she would be if she had obtained a decree for a judicial separation: (see also further provisions hereon, 41 Vict. c. 19, s. 4.)

In cases where a judicial separation has been decreed, the wife, from the date of the sentence, and whilst the separation continues, is to be considered as a *feme sole* with respect to property of every description which she may acquire, or which may come to or devolve upon her; and if she dies intestate, it will go to her next-of-kin, as if her husband was not living. And if she again cohabits with her husband, all such property is to be applied to her separate use; subject, however, to any written agreement to the contrary made between them while they are separate. She is also to be considered as a *feme sole* as regards entering into contracts and engagements, wrongs and injuries, suing and being sued, and her husband is no longer liable for her in any way; but if alimony has been decreed to the wife, and the husband does not pay it, he is liable for necessaries supplied to her.

We now come to that portion of the Act which gives the court power to dissolve the marriage, and the grounds for so doing. This is governed by the twenty-seventh and following sections of the Act, which provide that a husband may present a petition to the court for a dissolution of his marriage—not merely a judicial separation—on the ground that his wife has

been unfaithful; and the wife may present a petition for a dissolution of her marriage on the same ground under certain aggravations, or if in connection with unfaithfulness, there has been such cruelty as would of itself have entitled her to a divorce *à mensâ et thoro*, or if the unfaithfulness was coupled with desertion without reasonable excuse for two years or upwards; and the petition must state as distinctly as possible the facts on which the claim to have the marriage dissolved is founded. The alleged offender is to be made a co-respondent—that is, made to answer the petition along with the wife—unless excused by the court. Upon every petition for dissolution of marriage, the court is to be satisfied that there is no collusion between the parties, and if the fact is not fully proved, the petition is to be dismissed. If, on the other hand, the court finds that the case of the petitioner is fully proved, a decree is to be pronounced dissolving the marriage; but if the court finds that the petitioner has, during the marriage, been guilty of unfaithfulness, or of unreasonable delay in presenting the petition, or of cruelty towards the other party to the marriage, or of having deserted or wilfully separated himself or herself from the other before the infidelity complained of, and without reasonable excuse, the court is not bound to pronounce a decree for dissolution of the marriage. On making a decree dissolving the marriage, the court has power to order that the husband shall secure to the wife a gross sum of money, or an annual sum of money, for any term not exceeding her own life, proportioned to her fortune (if any), to the ability of the husband, and the conduct of the parties. And the court has power to direct to whom this sum shall be paid; whether to the wife herself, or to trustees on her behalf, and may impose other restrictions on it. Also, in any suit or other proceeding for obtaining a judicial separation or a decree of nullity of marriage, and on any petition for dissolution of marriage, the court may either by any interim orders, or by the final decree, make such provision as may be deemed just and proper with respect to the custody, maintenance, and education of the children, and may also give directions for placing them under the protection of the Chancery Division of the High Court. And in any case in which the court pronounces a sentence of divorce or judicial separation for unfaithfulness of the wife, and the wife is entitled to property either in possession or reversion, the court has power to order such settlement as it thinks reasonable to be made of such pro-

perty, or any part of it, for the benefit of the husband or the children of the marriage,

A power of appeal is given from the judge-ordinary of the court to the full court, whose decision is final, unless the petition was presented for a dissolution of marriage, in which latter case there is an appeal from the decision of the full court to the House of Lords.

If no appeal is made from the decree dissolving the marriage within due time from the date of the decree, or if an appeal is made, and such appeal is dismissed, the parties may then marry again, as if the prior marriage had been dissolved by death. But no clergyman in holy orders of the Church of England or Ireland can be *compelled* to solemnize the marriage of any person whose former marriage may have been dissolved on the ground of his or her culpability, or is liable to any suit, penalty, or censure for solemnizing or refusing to solemnize the marriage of such person. But if the minister refuses to perform the marriage service, he is to permit any other minister in holy orders entitled to officiate within the diocese in which the church or chapel is situated, to perform there the marriage service.

The reader has now a general view of the law of divorce, and we will next give a sketch of its practice, which is to the following effect :

The first step is to present a petition, which is filed at the principal registry along with an affidavit of verification ; the affidavit must also state that there is no collusion.

The next step is to bring the respondent or respondents before the court, which is done by serving him or them with a *citation*, duly stamped and signed by a registrar, having first left a *præcipe* with the clerk at the registry. At the time of serving the copy of the citation the original should be produced and shown ; a copy of the petition is also left with the copy citation. When the copy citation is served the original is returned into and filed in the registry of the court.

The respondent or respondents should, on the expiration of eight days from the service of the copy citation, enter an appearance thereto, at the registry, and file an answer within twenty-one days from the service of the citation, and where new matter is alleged it must be accompanied by an affidavit of verification, which must also deny collusion. And on the day the answer is filed a copy must be delivered to the petitioner or his or her proctor or solicitor. The petitioner has fourteen days to reply to

this answer, and the respondent again fourteen days to answer the reply.

When the pleadings are finished, causes in which damages are not claimed are to be heard before the court without a jury; but, if damages are claimed, then before the court with a common jury.

If it is wished to have a cause heard in any other way, the application for the judge's direction is to be by summons at chambers.

Before the cause is set down for hearing or trial the pleadings are referred to one of the registrars, who is to certify that they are correct, and in proper order. If they are irregular, he is to cause the irregularity to be corrected, or refer the matter to the court.

The court, after hearing the cause, gives judgment, which, in the first instance, is a decree *nisi*, and is ultimately made absolute. But it is no longer necessary to apply to the court on motion to make a decree *nisi* for dissolution or nullity of marriage absolute.

BOOKS TO BE READ.—Mr. Geo. Brown's treatise on Divorce may be studied, but for examination purposes Haynes' "Students' Guide to the Law and Practice of Probate and Divorce" will be sufficient. See also "Divorce and Matrimonial Rules, August, 1880."

2. *The Probate Court.*

By the stat. 20 & 21 Vict. c. 77, entitled "An Act to amend the Law relating to Probates and Letters of Administration in England," and now in full operation, it is enacted that the *voluntary and contentious jurisdiction and authority* of Ecclesiastical, Royal, Peculiar, Manorial, and other courts and persons in England, which, before the passing of this Act, had jurisdiction or authority to grant or revoke probate of wills or letters of administration of the effects of deceased persons, shall in respect of such matters, absolutely cease, and no jurisdiction or authority in relation to any matters or causes testamentary, or to any matter arising out of or connected with the grant of revocation of probate or administration, shall belong to or be exercised by any such court or person. And this jurisdiction is now vested in the Court of Probate, which is a division of the High Court of Justice, presided over by one judge, who is assisted by the officers of the court.

The business of the court is divided into two branches, the contentious and the non-contentious, or common form business. The latter consists in obtaining probate and letters of administration when the right thereto is not contested, and all business of a non-contentious nature taken in the court in matters of testacy and intestacy, not being proceedings in any suit, &c. The contentious business includes all such matters as are not common form, excepting the warning of *caveats*. It generally arises when a testator's will is contested by his relatives, and in cases of intestacy when the question arises as to who is entitled to administration.

The proceedings in a probate action are commenced by entering a *caveat* against a grant being made in respect of a deceased person's estate, and notice thereof is sent to the proper district registrar.

A writ of summons issues, the indorsement on which is verified by affidavit first duly filed. The defendant appears as in other actions, and a statement of claim is then delivered to him by the plaintiff. Affidavits as to scripts are next made and filed by both plaintiff and defendant. The defendant in due course puts in his answer; yet if he makes default the action may proceed. Issue is ultimately joined, and the cause entered. The trial sometimes takes place before the judge without a jury, and sometimes with one. In the former case there may be an application for a re-hearing, or an appeal to the Court of Appeal. If the cause was heard before a jury, and it is alleged the judge's direction to them was bad in law, there is an appeal to the Court of Appeal by way of *exception* to the judge's ruling. (a)

By section 23, however, of the Act, it is provided that no suits for legacies or suits for the distribution of residues shall be entertained by the court, or by any court or person whose jurisdiction as to matters and causes testamentary is abolished by the Act.

BOOKS TO BE READ.—As to the mode of proving wills and obtaining grants of letters of administration, and the law relating thereto, the student is referred to Haynes' "Students' Guide to the Law and Practice of Probate and Divorce." For the practitioner, "Coote's Probate Court Practice" is advised.

(a) See Steph. Com. 650, vol. iii., ed. 8.

3. *Admiralty Court.*

The Admiralty Court is a division of the High Court of Justice, and consists of a judge, registrars, chief clerks, and other officials.

The chief matters over which it exercises jurisdiction are claims in respect of salvage of a ship, or life, or goods therefrom; claims in respect of towage; or for damage done by the ship; or claims for masters' and seamen's wages; or for necessities supplied to ships; or claims respecting the possession, employment, or earnings of a ship; or in respect of mortgages registered pursuant to the Merchant Shipping Act, 1854; or in respect of bottomry and respondentia bonds.

Although proceedings in the Admiralty Court are commenced by action, yet all rules and orders formerly in force in this court, which are not inconsistent with or expressly varied by rules of the High Court or Court of Appeal, are still to remain in force in regard to matters formerly dealt with by this court. The proceedings in actions in this court are complicated and peculiar, and the student is referred for information thereon to the text books given below.

BOOKS TO BE READ.—Roscoe's "Treatise on the Jurisdiction and Practice of the Admiralty Division of the High Court" is a suitable work either for student or practitioner on this subject; but for the purpose of passing the examination Haynes' "Students' Guide to the Jurisdiction and Practice of the Admiralty Court" will, we think, be sufficient.

SECTION VII.

ECCLIASTICAL LAW AND PRACTICE.

This branch of our laws and its practice is now a subject on which the examiners, at the final examination, found questions. It is not, however, a compulsory branch, as before shown, and is chiefly useful to students who are seeking to obtain honours.

The various species of the ecclesiastical courts are :—

1. The court of the archdeacon, held in each archdeaconry before a judge appointed by the archdeacon and called his official. Its jurisdiction comprises all ecclesiastical causes arising within the archdeaconry. An appeal lies from this court to the court of the bishop.

2. The consistory or bishop's court is held in the several

cathedrals for the trial of all ecclesiastical causes arising within the diocese. The chancellor of the diocese is the judge and from him an appeal lies to the provincial court of the archbishop.

3. The provincial court of the archbishop. In the province of Canterbury it is termed the Court of Arches, and the judge thereof (sitting as the archbishop's deputy) is called the Dean of the Arches. The proper jurisdiction of this court is (as before shown) appellate, but original suits are sometimes brought therein. In the province of York this court is termed the Chancery Court. The two provincial courts are now however united and arranged on a new basis by the 37 & 38 Vict. c. 85 (the Public Worship Regulation Act, 1874); which empowers the two archbishops to appoint "a judge of the provincial courts of Canterbury and York."

The court of final appeal, however, in ecclesiastical cases is the Judicial Committee of the Privy Council, with the assistance of certain archbishops and bishops as assessors.

The different ecclesiastical courts have jurisdiction over the *subtraction*, or *withholding of* [tithes, from the rector or vicar; over the *nonpayment of ecclesiastical dues* to the clergy, such as pensions, mortuaries, &c.; also over *spoliation*, which is an injury done by one clerk or incumbent to another in taking the fruits of his benefice without right under a pretended title; also over *dilapidations*, which are a kind of ecclesiastical waste; these courts have also cognizance as to *neglect in repairing the church, churchyard, and the like*; also in suits respecting *pews and seats* in the body of the church.

The ordinary course of proceeding in these courts is by *citation* to cause the defendant to appear: by *libel* or *allegation* containing the ground of complaint. The *answer* of the defendant upon oath; and if he denies or extenuates the charge they proceed to *proofs*. If the defendant offers circumstances in his defence he also propounds a *defensive allegation*, to which the plaintiff puts in an *answer* on oath, and from thence proceed to *proofs*. Witnesses may be summoned and examined and affidavits may be made; when the pleadings and proofs are concluded they are referred to the consideration of the judge who *takes information* by hearing advocates on both sides, and forms his *interlocutory decree*, or *definite answer*, from which there generally lies an appeal.

The sentences of the courts are (amongst others) *suspension*, *deprivation*, and *excommunication*.

BOOKS TO BE READ.—So much of the third volume of Stephen's Commentaries as relates to this subject will, we think, be sufficient for the purpose of answering the examiner's questions hereon.

Phillimore's Ecclesiastical Law is a standard work on this subject, but it is only suitable for the practitioner. The price is 3*l.* 7*s.* 6*d.*

SECTION VIII.

MISCELLANEOUS LAWS.

There are several other divisions of the law, but as they are not requisite to be studied for the examination we shall notice them very briefly, leaving those students who desire information in these branches to seek it in the works pointed out.

International Law.

Every student should possess some knowledge at least of international law, which teaches the rights of men and states. And it is laid down "that different nations ought in time of peace to do each other all the good they can, and in time of war as little harm as possible without prejudicing their real interest."

For a first book, Wheaton's "Elements of International Law" is the best; and, should the student be desirous of pursuing the subject further, Story's or Westlake's "Conflict of Laws" may be read.

Colonial Law.

This is a branch of the law seldom studied by our lawyers at home, which is somewhat to be wondered at, seeing the vast extent of our colonial possessions and their great importance.

Forsyth's "Cases and Opinions on Constitutional Law," with notes, is a late treatise (1869) on this subject.

The Roman or Civil Law.

Lord Holt says that there can be no doubt that the laws of all nations are based upon the civil law; if so, a knowledge of it would seem indispensable to the lawyer. The student will, however, be unable to study this branch of the law without a moderate knowledge of Latin and Greek.

The student may read as a first book Lord Mackenzie's "Studies in Roman Law."

CHAPTER VI.

THE INTERMEDIATE EXAMINATION.

By the 23 & 24 Vict. c. 127, the 40 & 41 Vict. c. 25, and the Regulations of Nov. 1877, it is provided that every person serving under articles of clerkship shall (save as excepted) present himself at an intermediate examination and be examined within the six months next succeeding the day on which he completes half his term of service, in such elementary works on the laws of England as may be from time to time selected by the Examination Committee: and that the names of the books selected for examination in each year may be obtained from the secretary of the examiners in the month of July in the previous year.

Such intermediate examination takes place at the hall of the Incorporated Law Society, Chancery Lane, on certain specified days in the months of January, April, June, and November in each year.

The book selected for the intermediate examination for the year 1881 is Stephen's "Commentaries on the Laws of England."

Candidates are required to give to the secretary of the Incorporated Law Society at least *thirty days'* notice before the date of the examination at which they propose to be examined within the limit above mentioned, and at the same time to leave their articles of clerkship and any assignment thereof, or supplemental articles, duly stamped and registered, together with a certificate of their having passed the Preliminary Examination (unless they shall have been exempted therefrom and then evidence showing the right to such exemption must be produced), and answers to the questions as to due service and conduct up to that time. Prints of these questions can be obtained on application at the office of the Incorporated Law Society.

The following may be the form of the notice above referred to :—

TO THE SECRETARY OF THE INCORPORATED LAW SOCIETY.

Notice is hereby given, that _____ who is now [or was lately] under
 articles of clerkship to _____ of _____ intends to apply for Intermediate
 Examination in _____ next.

Dated the _____ day of _____ 18 _____,

Signature of candidate or his agent.

Present address :—

If the candidate has been assigned, it should be so stated in the notice.

Candidates who fail to pass, or attend at the examination for which they have given notice, may attend at any subsequent intermediate examination. A *renewed* notice must, in that case, be given fourteen days at least before the date of such subsequent examination.

The fee payable on giving notice of examination is 3*l.*, and for a *renewed* notice 1*l.* 10*s.*

On a *renewed* notice being given candidates are requested to write the word "Renewed" at the head of the paper.

If a candidate has inadvertently omitted to give notice within due time, he must apply on summons for an order to be examined, notwithstanding the omission. The application must be with the consent of the secretary of the Incorporated Law Society.

The questions as to due service referred to above are very similar to those used at the final examination, a copy of which will be found in a subsequent part of this work. (See *post*, ch. 7, sect. 1.)

These questions are to be answered and returned to the secretary of the Incorporated Law Society.

At the time appointed the candidate attends at the Hall of the Incorporated Law Society for the purpose of being examined.

On entering a number is assigned to him and he must take his seat at the table on which such number is placed.

A paper is given to him containing questions on the works selected by the examiners as before stated.

Each candidate is to endeavour to answer every question in each branch.

The answers are to be written on the paper supplied to the candidate; and the answers to each paper are to be written *concisely*, in a plain and legible manner, and *signed* at the foot.

The candidates are to finish their papers by *four* o'clock.

When the candidate has finished his answers, he will deliver them, together with his printed copy of the questions, to the secretary, at the examiner's table, and he will exchange the ticket given on his entrance for another ticket which he is to give to the person at the door when he goes away.

After the examination has begun, no candidate is to leave the room (without permission obtained from the examiners) until he shall have delivered in his answers; and any candidate who leaves without permission will not be allowed to return.

No candidate will be allowed to consult any book during his examination, or to communicate with, receive assistance from, or copy from the paper of another; and in case this rule is infringed, the names of both such persons will be immediately struck out of the list of candidates.

The examiners ask the candidate to *endeavour* to answer *all* the questions, but they will pass a candidate who answers a *majority* of the questions correctly.

The questions asked at the intermediate examination held in November, 1880, will be found, *post*, in Appendix A.

At the expiration of about a month from the examination each candidate will receive a notice informing him whether he has, or has not, been successful. If successful the examination Committee give the candidate a certificate to that effect.

A candidate who fails to pass an intermediate examination within twelve months next after the expiration of one half his term of service will have his *final* examination postponed for a period equal to the period intervening between the expiration of such twelve months and his passing such intermediate examination, or for such shorter period as the examining committee may, on the ground of illness, or other special ground, direct.

A candidate who has been refused a certificate of having passed the intermediate examination, and who objects to such refusal either on account of the nature or difficulty of the questions asked by the examiners, or on any other ground, may, within one month after such refusal appeal to the Master of the Rolls, by petition, against such refusal. On the hearing thereof the Master of the Rolls may make such order as to him may seem meet.

A barrister of *not less than five years standing* at the bar, who has procured himself to be disbarred with a view to becoming a solicitor, and has obtained from two of the benchers of his Inn a certificate of his being a fit and proper person to practise as a solicitor, is exempted from passing the intermediate examination. (a)

(a) 40 & 41 Vict. c. 25, s. 12.

CHAPTER VII.

THE FINAL EXAMINATION.

WHEN the period of service under articles of clerkship has expired, the clerk, having completed his studies, must next proceed to offer himself for examination at the Final Examination.

SECTION I.

SUBJECTS OF EXAMINATION, NOTICES, ETC.

The subjects of the final examination are divided into essential and optional :

Essential—

1. Principles of law and procedure:
 - a. In matters usually determined or administered in the Chancery Division of the High Court of Justice.
 - b. In matters usually determined or administered in the Queen's Bench, Common Pleas, and Exchequer Divisions of the High Court of Justice.
2. Principles of the law of real and personal property and the practice of conveyancing.

Optional—

3. The law and practice of bankruptcy.
4. { Criminal law and practice.
Proceedings before the Justices of the Peace.
5. The law and practice of the Probate, Divorce, and Admiralty Division of the High Court of Justice, and Ecclesiastical law and practice.

Candidates are required to give notice in writing *forty-two days* at least before the date of the examination to the secretary of the Incorporated Law Society, Chancery Lane, London.

Candidates are also required, *at the same time*, to leave with the secretary of the society their articles of clerkship and any assignment thereof, or supplemental articles, and the certificates of their having passed the Preliminary Examination, or evidence

of their exemption therefrom, and certificates of having passed the Intermediate Examination, together with answers to the questions as to due service and conduct. Prints of these questions can be obtained on application at the office of the Incorporated Law Society.

The examinations are held at the hall of the society, Chancery-lane, London, and take place four times a year.

Where articles of clerkship expire *between*—

10th January and 15th April, candidates may be examined in January, or at any subsequent examination.

14th April and 22nd May, candidates may be examined in April, or at any subsequent examination.

21st May and 2nd November, candidates may be examined in June, or at any subsequent examination.

1st November and 11th January, candidates may be examined in November, or at any subsequent examination.

Candidates who fail to pass, or attend at the examination for which they have given notice, may attend at any subsequent examination. A renewed notice must, in that case, be given fourteen days, at least, before the date of such subsequent examination.

The fee payable on giving notice of examination is 5*l.*, and for a *renewed* notice 2*l.* 10*s.*

The following may be the form of the notice :—

TO THE SECRETARY OF THE INCORPORATED LAW SOCIETY.

Notice is hereby given, that _____ whose place or places of residence and service for the last preceding twelve months have been _____ and who is now [or was lately] under articles of clerkship to _____ of _____ (a) intends to apply for Final Examination in _____ next, and to compete for honours. (b)

Dated the day of 18 .

(Signature of Candidate or his Agent.)

Present Address :—

On a *renewed* notice being given, candidates are requested to write the word "renewed" at the head of the paper.

If the candidate has, from inadvertence, neglected to give notice of examination, the omission may be remedied in the way pointed out *ante*, p. 79, as on an intermediate examination.

(a) If there has been any assignment state it.

(b) If the candidate does not intend to compete for honours this part of the notice must be omitted.

The following are the questions as to due service above referred to:

QUESTIONS AS TO DUE SERVICE OF ARTICLES OF CLERKSHIP TO BE ANSWERED BY THE CLERK.

1. What is now your age?
2. Have you served the whole term of your articles at the office where the solicitor or solicitors to whom you were articulated or assigned carried on his or their business? and if not, state the reason.
3. Have you been at any and for what time *bond fide* employed as a pupil by a practising barrister or special pleader?
4. Have you at any time during the term of your articles been absent without the permission of the solicitor or solicitors to whom you were articulated or assigned? or of the barrister or special pleader with whom you may have been as a pupil, and if so, state the length and occasion of such absence.
5. Have you, during the period of your articles, been engaged or concerned in any profession, business, or employment other than your professional employment as clerk to the solicitor or solicitors to whom you were articulated or assigned as a pupil to a barrister or special pleader?
6. Have you, since the expiration of your articles, been engaged or concerned, and for how long a time, in any and what profession, trade, business, or employment other than the profession of a solicitor?

Dated the day of 18 .

Name.

Address.

QUESTIONS TO BE ANSWERED BY THE SOLICITOR OR AGENT WITH WHOM THE CLERK MAY HAVE SERVED THE WHOLE OR ANY PART OF THE TIME UNDER HIS ARTICLES.

1. During what period has served under his articles at the office where you carry on your business? If he has not served for any portion of the term of his clerkship, state the reason.
2. Has the said , at any time during his service under articles with you, been absent without your permission? and if so, state the length and occasions of such absence.
3. Has the said , at any time during his service under articles with you, been engaged or concerned in any profession or business, or employment, other than his professional employment as your articulated clerk?
4. Has the said , during the whole term of his clerkship, with the exceptions above mentioned, been faithfully and diligently employed in your professional business of a solicitor?
5. Has the said , since the expiration of his articles, been engaged or concerned, and for how long a time, in any and what profession, trade, business, or employment, other than the profession of a solicitor?
6. Is the said , as regards character a fit and proper person to be admitted a Solicitor of the Supreme Court?

Dated the day of 18 .

Name.

Address.

If the clerk has served any part of his time with a barrister or special pleader, a similar paper of questions must be answered by such barrister or special pleader.

SECTION II.

RULES FOR THE HONOURS EXAMINATION.

The Incorporated Law Society have made the following rules for the regulation of the Honours Examination :—

1. As from the 31st December, 1879, no honorary distinction (except local prizes already instituted) will be awarded by the Society to any candidate in respect only of the Final Examination. All honorary distinctions awarded by the Society will—with the exception mentioned—be awarded to candidates who pass the Honours Examination as hereinafter mentioned.

2. As from the 31st December, 1879, there shall be held in the hall of the Society, or in such other place as the Examination Committee may from time to time appoint, four voluntary examinations for honours in each year. Such examinations shall take place in the same weeks as those in which the Final Examinations are held, and as a general rule on the Friday in those weeks respectively.

3. The Committee shall, with the assistance (so far as they may think proper to resort to the same) of the Examiner or Examiners to be appointed for the purpose by the Council, conduct the Honours Examinations.

4. The Council may, from time to time, by resolution, appoint such competent person or competent persons as they may see fit to be an Examiner or Examiners to assist the Committee in the Honours Examination, and the Council may at pleasure remove any examiner so appointed.

5. There shall be paid to every Examiner so appointed, not being a member of the Committee or of the Council, such remuneration as the Council may from time to time, by resolution, prescribe.

6. The Honours Examinations shall be open to all candidates *without reference to age*, and shall be on the subjects specified for the Final Examinations in the Regulations.

7. Every candidate who is eligible and desirous to compete for honours shall, at the time when he gives notice of his desire to be examined at any Final Examination, give notice in writing of

his desire to be examined for honours. Forms of notice can be obtained at the office of the Society.

8. At each Honours Examination the candidates who, in the opinion of the Committee, are deserving of honorary distinction will be arranged in three classes, and for the purpose of this classification the marks obtained by each candidate at the Final Examination will be taken into consideration, as well as those obtained by him at the Honours Examination.

9. The names of candidates placed in the first class will be arranged in order of merit, and every candidate placed in that class will, in addition to a class certificate, receive a prize.

The names of candidates placed in the second and third classes respectively will be arranged alphabetically, and every candidate placed in those classes will receive a class certificate.

The certificate will be in the following or an equivalent form :—

HONOURS EXAMINATION.

By Authority of the Council of the Incorporated Law
Society of the United Kingdom.

I do hereby certify
that

at the Honours Examination
held on the _____ day of _____ 18 .

who served his Articles of Clerkship to

was placed in the first [second or third] class.

_____ *President.*

10. The names of all candidates who attain honorary distinction will be printed in the Society's Annual Report.

11. At each Honours Examination the following prizes will be awarded, unless in the opinion of the Committee the standard attained should not justify the issue of any first-class list :—The Clement's Inn Prize (value 10*l.* 10*s.*) ; The Clifford's Inn Prize (value 5*l.* 5*s.*) ; and the New Inn Prize (value 5*l.* 5*s.*) ; or an additional Society's Prize of like value. In addition, the Society will give as many prizes (value 5*l.* 5*s.* each) as are required. The value of each prize will be expended by the Society in the purchase of legal, historical, or constitutional works, to be selected

by the successful candidate, and such works will be bound at the expense of the Society, and be stamped with the arms of the Society.

12. In addition the following prizes will be awarded according to the result of the Honours Examinations during the year, namely:

The Beardon Prize, being the dividend on 3333*l.* 6*s.* 8*d.* Consolidated Bank Annuities.

The Scott Prize, being the dividend on 1265*l.* Preferential 4½ per Cent. London, Brighton, and South Coast Railway Company's Stock (1863).

The Broderip Gold Medal, to be purchased with the dividend on 333*l.* 6*s.* 8*d.* Reduced Annuities.

SECTION III.

MODE OF PROCEEDING, AND DIRECTIONS TO BE ATTENDED TO AT THE EXAMINATION, APPEAL, &c.

Each candidate will (on entering the hall) have a number given to him, and will take his seat at the end of the table on which such number is placed.

On the first day the candidates will be required to answer questions (a) classed under the several heads of—

1. Preliminary.

2. Principles of Law and Procedure, in two papers, viz. :—

(A) In matters as administered under the usual jurisdiction of the Chancery Division of the High Court of Justice.

(B) In matters as administered under the usual jurisdiction of the Queen's Bench, Common Pleas, and Exchequer Divisions of the High Court of Justice.

The answers to the preliminary questions, and to those contained in Paper A, are to be brought up at One o'clock. The candidates may then retire for an hour.

At Two o'clock, paper B. will be delivered to the candidates.

(a) There are nominally fifteen questions in each of the three essential branches, and ten in each of the other branches, but they sometimes contain double that number.

The answers to the questions contained in this paper are to be brought up at Five o'clock.

On the second day papers will be delivered to each candidate, containing questions in—

3. Principles and Application of the Law of Real Property and Conveyancing.
4. Bankruptcy and Practice of the Courts.
5. Criminal Law and Proceedings before Justices of the Peace.
6. The Law and Practice of the Probate, Divorce, and Admiralty Divisions of the High Court of Justice and Ecclesiastical Law and Practice.

The answers to the questions contained in paper No. 3 ("Principles and Application of the Law of Real and Personal Property and Conveyancing") are to be brought up at one o'clock. The candidates may then retire for an hour.

At Two o'clock, papers Nos. 4, 5, and 6 will be delivered to the candidates.

The answers to these papers are to be brought up at Five o'clock.

Each candidate is required to answer *all* the Preliminary questions, and also to answer in *three* of the other branches of the examination, viz., papers (No. 2) *A* and *B*, and paper No. 3 ("*Real Property and Conveyancing*.") The examiners will propose questions in "*Bankruptcy and Practice of the Courts*," in "*Criminal Law and Proceedings before the Magistrates*," on "*The Law and Practice of the Probate and Divorce and Admiralty Court*," and on "*Ecclesiastical Law and Practice*," in order that candidates who have given their attention to these subjects may have the advantage of answering such questions, and the correctness of their answers in these departments taken into consideration in summing up the merit of their general examination.

The answers under the *above-mentioned heads* are to be written on one side only on *separate* papers for each head; and the answers to each paper should be written *concisely* in a plain and legible manner, and *signed*.

When the candidate has finished his answers in each paper he will deliver them (tied up), together with his printed copy of the questions, to the secretary at the examiner's table, and he will exchange the ticket given on his entrance for another ticket which he is to give to the person at the door when he goes away.

After the examination has begun no candidate is to leave the hall (without permission obtained from the examiners) until he shall have delivered in his answers; and any candidate who leaves the hall without permission will not be allowed to return.

No candidate will be allowed to consult any book during his examination, or to communicate with, receive assistance from, or copy from the paper of another; and in case this rule is discovered to be infringed, both such persons will be considered *not to have passed their examination.* (a)

At the top of the red ink ruled sheets for the answers is printed this recommendation: "You are requested to consider every question carefully before answering it, and to answer every part of it, and not to answer merely in the affirmative or negative, but to state the reason for your answer."

The examiners require the candidate to "answer the question as directly as he can; and *after* he has thus answered he may illustrate or enlarge upon his meaning, but a *directly correct answer* is all that is required by the examiners to ensure the full number of marks:" (*From the Speech of Master Templar at the Hilary Term Examination, 1864.*)

The greatest number of marks for any one answer is ten. Therefore, if the candidate answers all the fifteen questions he gets 150 marks. If he gets seventy-five marks in each of the three indispensable branches he will pass: (*From the Speech of Mr. Cookson, at the Meeting of the Metropolitan and Provincial Law Association, held 1863.*) But seventy-five marks is the lowest number taken.

A wrong answer will not be considered unfavourably if it displays an acquaintance with the subject. But this, of course, will depend upon the number of correct answers besides, for the examiners require a majority of the questions in the three indispensable heads to be answered correctly, or seventy-five marks in each of the three indispensable branches.

Notwithstanding the printed recommendations at the top of the sheets for the answers, to answer every part of the question, still, if the candidate cannot give a direct answer to every part of the question, it will be better to state what he does know on the subject than to leave it entirely unanswered.

The result of the examination is made known to the candidate

(a) The foregoing directions are laid down by the examiners, and a printed copy is given to each candidate on commencing his examination.

a few days after the second day's examination, by circular, informing him whether he has or has not passed the examination, and, if he has, also stating when the examiner's certificate to that effect will be ready.

The following is the form of the certificate :—

INCORPORATED LAW SOCIETY.

Final Examination.

By authority of the Council, I do hereby certify that A. B., of
has passed the Final Examination pursuant to the Solicitors Act, 1877, and
the regulations in force thereunder.

Dated this day of 18 .
A. B.
President

The questions asked at the final (pass) examination, held in November, 1880, will be found in Appendix A.

If the candidate has given notice of his intention to compete for honours, he must attend at the hall of the Incorporated Law Society, Chancery-lane, on the day named, for the purpose of being examined : (see *ante*, ch. 7, sect. 2.)

The questions asked at the honours examination, held in November, 1880, will be found in Appendix A.

Any person who has been refused a certificate of having passed a final examination, and who objects to such refusal, either on account of the nature or difficulty of the question, or on any other ground, may, within one month after such refusal, appeal by petition to the Master of the Rolls against such refusal. Such petition is to be presented at the Petty Bag Office, without payment of any fee, and a copy of such petition is to be left therewith, and is to be delivered by the clerk of the Petty Bag Office to the secretary of the Incorporated Law Society, who is also to notify to such secretary the day appointed for the hearing of the petition.

On the hearing thereof the Master of the Rolls may make such order as to him may seem meet ; and if the person appealing obtains an order for his admission, such order entitles him to a certificate from the Incorporated Law Society of his fitness and capacity to act as a solicitor in the same manner as if he had passed his final examination. (a)

(a) 40 & 41 Vict. c. 25, s. 9.

CHAPTER VIII.

THE ADMISSION AND CERTIFICATE TO PRACTICE.

THE ADMISSION.

THE examiners' certificate of having passed the Final Examination being obtained, the candidate must next, if he wishes to practise as a solicitor, proceed to get admitted in the Supreme Court.

The Master of the Rolls now appoints a day for the admission of successful candidates on the roll of solicitors; and to this end has ordered that every person applying to be admitted as a solicitor must, six weeks before the day of the month in which he proposes to be admitted, cause to be delivered at the Petty Bag Office a written notice, signed by himself, containing a statement of his place of abode, and the name or names, and place or places of abode of the person or persons with whom he served his articles of clerkship, and containing in addition thereto a statement of the place or places of abode or service for the last preceding twelve months.

The following may be the form of the notice:—

Notice is hereby given that A. B. of whose place of abode [or service if *still under articles*] now is, and for the last preceding twelve months has been at and who now is [or lately was] under articles of clerkship to C. D. of solicitor of the Supreme Court (a) intends to apply in the month of next, to be admitted a solicitor of the Supreme Court.

Dated this day of 18 .

A. B.

It is no longer necessary to renew this notice if not acted upon, unless there has been great delay, the first notice being sufficient: (Chitty, Forms, 17, 11th edit.) And, if from inadvertence, the original notice has not been given in due time, the candidate may take out a summons at the Petty Bag Office, and serve the registrar of solicitors with a copy

(a) If there has been any assignment or further articles it must be stated in the notice.

thereof, on which an order can generally be obtained to cure the omission: (Arch. Pr. by Prentice 59, 13th edit.)

An affidavit of due service of clerkship, and of having given notice of admission must be prepared.

The following may be the form of the affidavit:—

In the High Court of Justice.

In the matter of gentleman an articled clerk,

I, A. B., of gentleman, make oath and say,

1. That I have actually and really served, and was employed by C. D., of gentleman, a solicitor of the Supreme Court, as his clerk in the practice of a solicitor, from the day of the date of the articles of clerkship bearing date the day of 18 , for the (a) full term of five [or four, or three] years, pursuant to the said articles hereunto annexed, and which said articles were duly enrolled at within six months after the date thereof, and were subsequently duly left with the Registrar of Solicitors for entry.

2. I did not at any time during the term of my service mentioned in the said articles hold any office nor was I engaged in any employment whatsoever other than the employment of clerk to the said C. D. [and his partner, or partners, if any] in the business practice, or employment of a solicitor. (b)

3. I did on the day of 18 , being six weeks at least before the first day of , the same being the month in which I proposed to be admitted, cause to be delivered at the Petty Bag Office a notice in writing, signed by myself, containing a statement of my then place of abode, and the name and place [or places] of abode of the said C. D., [or if there has been any assignment or further articles add, "as well of the said C. D., as of the said E. F. respectively,"] with whom I served as an articled clerk during the continuance of my articles of clerkship, and containing in addition thereto a statement of my place of abode [or service] for the last preceding twelve months, purporting that I intended to apply in next to be admitted a solicitor of the Supreme Court.

Sworn, &c.

A. B.

(a) If there has been any assignment or further articles then, for the words "of five years," &c., substitute the following:—"of years and months, &c., or as the case may be," and add a paragraph to this effect:—

That I was duly assigned [or entered into further articles of clerkship] for the remainder of the said term of five [or four, or three] years unto E. F., of a solicitor of the Supreme Court, and that I have actually served and been employed by the said E. F., as his clerk, in the practice of a solicitor, from the day of the date of certain articles of assignment [or further articles of clerkship] bearing date the day of 18 , being the full term of years, months, and days, pursuant to the said articles hereunto annexed.

So if part of the time has been served with a barrister or special pleader, or with the London agent, the affidavit must state the period so served.

(b) See 23 & 24 Vict. c. 127, s. 10, and 37 & 38 Vict. c. 68, s. 4.

THE ADMISSION AND CERTIFICATE TO PRACTICE.

This affidavit, having been signed and sworn, the articles of clerkship and any assignment of them that may have been made, or any supplemental articles must be annexed, and, together with the examiners' certificate and the form of admission d stamped (a) and filled up, are lodged at the Petty Bag Office before the day of admission. On the day of admission the candidate attends the Court of the Master of the Rolls, and takes the necessary oath, and signs the roll. The admission, duly signed, and the examiners' certificate can, a few weeks afterwards, be obtained from the Petty Bag Office.

Persons admitted to practise in the Supreme Court are *ipso facto* entitled to practise in all its divisions. Also in the Ecclesiastical Courts; and in the Court of Bankruptcy, on signing the roll. Also in the County Court on signing the rolls of that court. (b)

THE CERTIFICATE.

Notwithstanding the admission in the Supreme Court, yet no person can practise until he has obtained his annual certificate, under a penalty of 50*l.*; and is also unable to recover any costs for business done whilst uncertificated.

For the purpose of obtaining the certificate, it is necessary in the first place to deliver to the Registrar of solicitors a declaration in duplicate, containing the party's name and place of business, and when and where admitted; and if he is entitled to the certificate, the Registrar will then give him one; and upon producing it, and the duplicate declaration at the Inland Revenue Office, Somerset House, and paying the duty, the stamped certificate will be granted. It requires enrolment.

The certificates expire on the 15th of November in each year, but until the 16th of December following is allowed to renew them, and if renewed before that day they relate back to the 15th of November; if renewed on a subsequent day they will not so relate back, but the solicitor is uncertificated during the period that may elapse between the 15th of November and the day of renewal.

If any solicitor neglects to renew his annual stamped certificate within the time limited by law, the Registrar of Solicitors is not

(a) The admission bears a duty of 25*l.* under the Stamp Act of 1870, and 5*l.* under the Judicature Act, 1873, and can be obtained at the Inland Revenue Office: (Cordery on Solicitors, 22.)

(b) See Cordery on Solicitors, 22, 23.

afterwards to grant a certificate to such solicitor without the order of the Master of the Rolls, who may by such order impose terms.

The amount of stamp duty payable annually on a certificate to practise within ten miles of the General Post Office, London, is for the first three years 4*l.* 10*s.*, and for each subsequent year 9*l.* And if it is to enable the solicitor to practise more than ten miles from the General Post Office, London, the amount of duty paid annually is for the first three years 3*l.*, and for each subsequent year 6*l.*

APPENDIX (A).

QUESTIONS FOR THE PRELIMINARY EXAMINATION.

October 27th and 28th, 1880.

ENGLISH COMPOSITION.

N.B.—The Exercises in composition must not be less than two, and need not be more than four pages in length. Great attention must be paid to grammar, spelling, and punctuation, as well as to the matter of the exercise.

Write an essay on *one* of the following subjects :—

1. Ireland.
2. The stage as a civilizing influence.
3. Architecture.
4. History.
5. Your past life.
6. Your favourite poet.

ELEMENTARY LATIN.

1. How many declensions are there in Latin, and how are they distinguished from each other? Give the genitive singular of *Æs. Jubar. Cassis. Caro. Nux. Nox. Mas. Mos. Formido. Crux. Crus. Calx. Dies.* and the dative plural of *Gradus. Œs. Avis. Pes. Calcar. Annis. Senex.*

2. Give examples (1) of nouns which vary their gender in the plural, (2) of nouns which have no plural, (3) of nouns which have no singular, (4) of nouns which vary their meaning in the plural.

3. Classify Latin Numerals. What are the two meanings of *Primum*? By what Adverbs is it followed according as either meaning prevails?

4. Distinguish between *Is. Hic. Ille. Iste*, and illustrate as fully as you can the various uses of each of them.

5. Define *Mood, Tense, Voice*. How many varieties of Duration can the Latin Present Tense denote? State the Rules for the sequence of Tenses.

6. What is meant by *Inceptive, Deponent, Frequentative, and Defective* Verbs respectively? Give as many examples as you can of Verbs identical in form but differing in meaning and inflection.

7. Give a Table of Latin Impersonal Verbs. Why are they so called, and what is their construction? Give copious examples.

8. Translate the following passages:—

(a) Ante senectutem curavi ut bene viverem : in senectute, ut bene moriar.

(b) Parmi sunt foris arma, nisi est consilium domi.

(c) Oderint, dum metuant.

(d) Virtus est vitium fugere et sapientia prima stultitia caruisse.

(e) Vetera sunt præcepta sapientium, qui jubent tempori parcere, et sequi Deum, et se noscere, et nihil nimis.

(f) Pergite, ut facitis, adolescentes, atque in id studium, in quo estis incumbite, ut et vobis honori, et amicis utilitati, et reipublicæ emolumento esse possitis.

ARITHMETIC.

N.B.—The working must in every case accompany the answer.

1. Distinguish between *Numeration* and *Notation*. What are *Digits*? How are they made to express all numbers? Write down in figures the following numbers. Fourteen millions and fifty-six; six hundred and eighty millions and eighty-two: six billions, six millions, six thousand and six. Divide the sum of forty millions fifty thousand and sixty, and thirty-nine millions four hundred and two thousand and eighty by their difference.

2. What is the measure, aliquot part, and submultiple of a quantity? Explain the method of proving multiplication by "casting out the nines." In what cases does it fail?

3. Define a fraction. How many kinds of Vulgar Fractions are there? Give examples of each kind. Reduce to their simplest forms:—

$$(a.) \quad \frac{\frac{7}{9} + \frac{1}{2} \text{ of } \frac{1}{3}}{\frac{1}{1\frac{1}{2}}} + \frac{\frac{1}{3}}{\frac{4}{5} - \frac{1}{2}} \text{ of } 2\frac{1}{2}.$$

$$(b.) \quad \frac{2\frac{1}{2}}{3\frac{1}{4}} + \frac{1\frac{1}{2} - \frac{5}{6}}{1\frac{1}{4} + \frac{5}{6}} + 1\frac{2}{3}.$$

$$(c.) \quad 2\frac{3}{4} + \frac{5}{3\frac{1}{4}} \text{ of } 3\frac{1}{2} - \frac{2\frac{1}{2}}{3\frac{1}{2}} \div 1\frac{7}{8}.$$

4. How do decimals differ from vulgar fractions? State the rule for the multiplication and division of decimals. Divide .000045 by 9, and 4 by .00001.

5. State the rules for converting Circulating decimals into vulgar fractions. Reduce to their simplest forms

$$(a.) \quad \left(\frac{2}{3} + \frac{5}{8} + \frac{1\frac{2}{3}}{1\frac{2}{3}} + \frac{9}{16}\right) \div .0208\bar{3}$$

$$(b.) \quad \frac{1}{0.1} - \frac{.0069}{.4 \times .00005 + .002 \times .0125}$$

6. How is a question in the Simple Rule of Three to be stated and solved? Give an example in illustration of your answer.

7. An Irish landlord abates $\frac{1}{3}$ in a shilling to his tenant, and the whole abatement amounts to 76*l.* 3*s.* 4 $\frac{1}{2}$ *d.* What is the rent?

8. In the copy of a work containing 327 pages, a remarkable passage begins at the end of the 156th page. At what page may it be expected to begin in an edition containing 400 pages?

9. If 6 shoemakers in 4 weeks make 36 pairs of men's and 24 pairs of women's shoes, how many pairs of each kind would 18 shoemakers make in 5 weeks?

10. I have to be at a certain place in a certain time, and I find that if I walk at the rate of four miles per hour I shall be five minutes too late, and if at the rate of five miles per hour I shall be ten minutes too soon. How far have I to go?

11. What is the time between 4 and 5 o'clock when the two hands are 17 of the minute divisions from each other?

12. If 35 barrels of water last 950 men 7 months, how many men would 1464 barrels last for 1 month?

HISTORY AND GEOGRAPHY.

1. Enumerate and explain the various terms in use to denote various configurations of land and water, respectively.

2. Describe the River systems and Mountain chains of England and Wales. Name the two most prominent capes in Yorkshire,

the three in Kent, the two in Cornwall, and the one in Denbighshire.

3. What are the boundaries of Spain and Portugal respectively? Name the cape which forms the eastern extremity of the Pyrenees, and the river which completes the boundary between France and Spain at the western extremity.

4. Trace through France the watershed dividing the waters flowing North-west from those flowing South-east?

5. State what you know of the introduction of Christianity into Britain?

6. Sketch the history of the kingdom of Mercia. What is the meaning of the name?

7. What was the division of the soil under Anglo-Saxon rule? What changes did the Norman Conquest effect in this particular?

8. Give a full account of the Continental possessions of England in the time of Henry II. How were they acquired and lost, respectively?

9. What insurrections took place in England during the reign of Richard II? State what you know about them.

10. Sketch the life of Cardinal Wolsey, and give your estimate of his policy as a Statesman?

11. Give an account of what happened in Ireland during the reign of Elizabeth, and in Scotland during the reign of Charles I?

12. State what you know of the following:—*The Remonstrance. The Humble Petition and Advice. The Instrument of Government. The Habeas Corpus Act. The Toleration Act.*

13. Relate the principal events under the reign of Queen Anne?

14. Give an account of the principal measures, from the earliest times, for effecting Parliamentary Reform.

FRENCH.

1. Give the plural of perdrix—oiseau—œil—cristal—portail—caillou—bleu—trou.

2. Write down the feminine of cruel—net—jaloux—mineur—faux—grec—frais—coi.

3. Give an example of each, of the comparative of superiority, inferiority, and equality.

4. Explain the difference between "Un homme de condition," and "Un homme en condition."

5. Give the first person singular, present subjunctive, of pouvoir—prendre—prévaloir—boire—vouloir—s'asseoir.

6. Give the English of : Ne vous laissez jamais aller à l'oisiveté. Mon ami n'est pas tout à fait aussi bien aujourd'hui. Faites-nous grâce de vos remarques. Il ne tiendra qu'à vous d'être plus heureux à l'examen prochain, travaillez sans relâche. Pour vivre heureux dans ce monde, il faut savoir ménager la chèvre et le chou.

Translate :

Henry IV. said in an assembly in Rouen, at the beginning of his reign : "Through the advice¹ of my good servants, through the sword of my brave nobility, and by the favour of heaven, have I been able to draw away this kingdom from slavery² and ruin, by which it was threatened. I wish to give it back its strength and splendour. Participate in this second glory, just as you have had a share³ in the first. I have not called you like my predecessors did, to compel⁴ you to approve blindly⁵ my will, but to receive, to believe, and to follow your advice, and to place myself under your protection.⁶ This is a wish⁷ which but few victorious and grey⁸-bearded kings would express, but the love I bear⁹ towards my subjects makes me to do the utmost,¹⁰ and to do everything honourably."

¹ Les conseils.

² servitude.

³ partager.

⁴ obliger.

⁵ aveuglément.

⁶ en tutelle entre vos mains.

⁷ envie.

⁸ gris.

⁹ porter.

¹⁰ se tendre tout possible.

LATIN.

The candidates were requested to translate passages from the author selected—Virgil.

QUESTIONS FOR THE INTERMEDIATE EXAMINATION.

November, 1880.

STEPHEN'S COMMENTARIES.—HEAD I.

1. What is the distinction between the interest or estate described as a "feud," and that described as "allodium?"
2. What was subinfeudation, what were its effects, and what statute put a stop to its practice?
3. State the essential elements of a joint tenancy.
4. What is the effect of a gift of an estate in fee to a man and his wife? and state the reason.
5. What was the general rule of law with reference to the

death of a legatee or devisee in the lifetime of the testator? and what statute affected the law upon this subject?

6. What is the effect, as a rule, of a limitation to a man and the heirs of his body of a copyhold estate? and give your reason.

7. Define an incorporeal hereditament, and give an illustration: and how must such a hereditament be transferred?

STEPHEN'S COMMENTARIES.—HEAD II.

8. In what cases, if any, is a husband liable for debts contracted by his wife, when she is living separately from him?

9. Under what circumstances, if any, is it lawful for a landlord to break open a house, to enable him to distrain?

10. A. owes B. 100*l.* for goods sold and delivered to A. by B. and agrees with B. to give to him 50*l.* in satisfaction of the 100*l.*; the 50*l.* is paid to B. by A.

A. also owes B. 100*l.* for money lent to A. by B., and agrees with B. to deliver to him a chattel worth 50*l.* in satisfaction of the 100*l.*; the chattel is delivered to B. by A.

Has B. in each, or either case, any claim upon A., and, if so, to what extent? Give the reason for your answer.

11. Explain upon what ground, and under what circumstances, an executor may retain his own debt; and will it make any difference if he is an executor *de son tort*?

12. State shortly the general course of proceedings, from the first step to the hearing of a case in the County Court: and in what cases judgment can be recovered without the appearance of the plaintiff in court to prove his claim.

13. If a house be destroyed or damaged by fire, tempest, or lightning, is the tenant thereof under any, and, if so, what liability to rebuild or make good the damage?

14. How must the execution of an instrument which has been attested by a witness be proved? and can the contents thereof be given in evidence without producing the instrument itself?

STEPHEN'S COMMENTARIES.—HEAD III.

15. What are the three regular forms of government, generally so called? what is the characteristic of each? and how do they balance each other in the British Constitution?

16. How are colonies usually acquired? How far does an Act of Parliament passed before, or after, the acquisition of a colony

respectively affect the laws of that colony? Does the mode of acquisition of the colony make any difference?

17. What measures were enacted for the prevention of bribery and corruption by the Corrupt Practices Prevention Act, 1854, and what additional offence of a like nature was created by the Representation of the People Act, 1867?

18. Give some particulars of the office, mode of election, and duties of coroners.

19. Mention the principal provisions of the Elementary Education Acts 1870 and 1876.

20. Under what circumstances is an attempt to commit arson a felony? Give Sir Edward Coke's definition of a burglar.

21. What is the difference between the two modes of prosecution—the presentment of a grand jury and an indictment by them found?

QUESTIONS FOR THE FINAL EXAMINATION.

November, 1880.

I.—THE PRINCIPLES OF LAW AND PROCEDURE.

(In matters usually determined or administered in the Chancery Division of the High Court of Justice.)

1. In what cases is lapse of time a bar to relief in equity in actions for specific performance?

2. When will the court set aside and cancel instruments which are voidable only?

3. Give the effect of the rule as to admission of allegations of facts in pleadings which are not denied in the pleadings of the opposite party.

4. When may an attachment be issued against a solicitor for misconduct in an action?

5. What is the effect of a creditor giving time to the principal debtor on the liability of his surety?

6. What is the course to be pursued by a plaintiff where no appearance has been entered for a defendant, who is an infant, or a lunatic, not so found by inquisition?

7. What causes and matters are specially assigned to the Chancery Division by the 34th section of the Judicature Act, 1873?

8. What arrangements can a solicitor make with his client as

regards costs of business already transacted and future business, and what Act bears on this?

9. State some of the applications for orders which may be made in chambers, subject to appeal to the judge?

10. What is the rule as to time of hearing a motion after service of notice, and how is the evidence taken?

11. If a mortgagee of leasehold property renews the lease in his own name, what is his position as regards his mortgagor, and what is the rule as to presentation to an advowson which is held on mortgage?

12. What is the effect of an agreement between two parties not to bid against each other at an auction, and what is the present law as to a vendor bidding at an auction, and under what Act?

13. To what is a party not complying with an order to make an affidavit of documents subject?

14. What is the usual rule as regards the costs of a successful appellant, both of appeal and in the court below?

15. What is the law as to separation agreements between parents giving the custody of an infant to its mother, and what Act bears on this?

II.—PRINCIPLES OF LAW AND PROCEDURE.

(In matters usually determined or administered in the Queen's Bench, Common Pleas, and Exchequer Divisions of the High Court of Justice).

1. Where interest is not made payable at any fixed time by the terms of a bill of exchange or promissory note, from when does it run?

2. Who is entitled to notice of dishonour of a bill of exchange, and within what time must it be sent?

3. Give an instance of a contract (a) illegal by statute, (b) illegal by common law.

4. What is a writ of Habeas Corpus? When was the Act passed, and what is its object?

5. Can an infant recover damages for personal injuries sustained through the negligence of a railway company?

6. Must a bill of sale be attested, and how, so as to render it valid against creditors on registration?

7. In what respect has the law been altered with regard to the production of banker's books?

8. What alteration has recently been made, in practice, with reference to the time to deliver or amend pleadings?

9. What is an interpleader?

10. A. B. and C. are the joint registered owners of a ship and 1000*l.* Consols. Upon the death of B. and C. in whom do the shares in the ship vest, and in whom the Consols? What is the maxim?

11. Before what time in the day must pleadings or summonses be served, and is there any difference on Saturday?

12. Is it a sufficient publication of a libel to write a libellous letter of a husband to a wife? What is the leading case?

13. What is it necessary to prove, in an action of slander, to entitle the plaintiff to recover?

14. What is the rule with regard to the admissibility in evidence of entries contained in a book?

15. If the seller of goods, knowing at the time that the buyer, though dealing with him in his own name, is the agent of another, and elect afterwards to give credit to the agent, can he afterwards recover the value against the principal? Is there any difference if the principal was not known at the time of sale?

III.—THE LAW OF REAL AND PERSONAL PROPERTY AND THE PRACTICE OF CONVEYANCING.

1. For what period may a purchaser of land now require the title to be shown, in the absence of special stipulation, and to what qualification is the general rule subject?

2. What would be the proper mode of alienation to employ for conveying, on a sale, property falling under each of the following descriptions:—

(a) A vested estate in remainder in copyholds.

(b) A chattel interest in freeholds.

(c) A ship?

3. Give an illustration of each of the following classes of estates in land:—

(a) An estate tail male special.

(b) A contingent remainder.

(c) An executory devise?

4. The draft of a deed of covenant for production of title deeds is sent to you for approval on behalf of the covenantor, who is a trustee. The covenant, as prepared, is absolute in its terms. Should you insert any qualifying clause on behalf of your client, and, if so, to what effect?

5. When, and for what purposes, may executors sell or mortgage real estate of their testator?

6. Upon a sale by auction, in lots, of freehold property, the whole of which is let on lease at an entire rent, what provision should be made by the conditions of sale for the apportionment of such rent between the purchasers?

7. A house is let upon a yearly tenancy, under an agreement containing no stipulation as to repairs. Does either party come under an implied liability for repairs, and, if so, to what extent?

8. Under what conditions, and with what formalities, may a married woman dispose of her reversionary interest in personalty?

9. What statutory protection has been afforded to executors in connection with the discharge of a testator's debts, and the distribution of his assets?

10. How should you advise the trustees of a marriage settlement to deal with an immediate cash bonus, declared upon a policy of life insurance, included in the settlement?

11. If a term of years is bequeathed to A. for life, and after his decease to B., what will be the respective legal positions of A. and B. as to the subject of the bequest?

12. Under what circumstances should application be made to the Crown for the re-payment of all or any part of a sum paid for probate duty?

13. A testator devises land by his will. Subsequently to the date of the will he sells the land so devised; but he afterwards re-purchases a portion of the same land, and retains it to the time of his death. What operation will the transactions, subsequent to the date of the will, have upon the devise?

14. What statutory obligation applies to the formation of a trading partnership consisting of more than twenty persons?

15. You are instructed by a client to take the necessary steps for selling real estate of which he is seised in fee. What would be the general nature of your duties, as the vendor's solicitor, up to the point of the property being offered to bidders by the auctioneer?

IV.—THE LAW AND PRACTICE OF BANKRUPTCY.

1. What are the powers of a trustee in bankruptcy in respect of a bankrupt's copyholds?

2. In what cases is a foreign discharge, or a discharge pursuant to a Colonial Act, a good answer to an action here for

debt? Can an English discharge be pleaded in bar to an action in the colonies for debt?

3. From what debts provable under his bankruptcy is a debtor not released by an order of discharge?

4. What actions pending at the commencement of bankruptcy or liquidation proceedings are not properly restrainable by the Court of Bankruptcy? If a Court of Bankruptcy makes an order in matters beyond its jurisdiction, what is the remedy?

5. If a receiver has been appointed, what must he do with the money and property in his hands: (1) In cases of bankruptcy and liquidation, and (2) when an extraordinary resolution for composition has been passed?

6. State some of the main points of difference between "apparent possession" under the Bill of Sales Act, and "possession, order, or disposition," under the Bankruptcy Act.

7. Does the discharge of a firm by the joint creditors set an individual partner free from his separate liabilities? Does a discharge granted to a partner in his separate bankruptcy relieve him from his joint as well as his separate debts?

8. What successive appeals are open to a person aggrieved by an order of the registrar of a local court of bankruptcy? In what case is there an appeal to the House of Lords?

9. A. made a voluntary settlement of an equity of redemption, and covenanted with the trustees of the settlement that he would pay the interest on the mortgage, and would, when required, pay off the principal. He became bankrupt within two years. B. made a similar settlement, with similar covenants, and became bankrupt within ten years. Would these settlements, or either of them, be valid against the trustee in bankruptcy?

10. In what way are the provisions of the Bankruptcy Act as to voluntary settlements qualified by the Married Women's Property Act, 1870?

V.—CRIMINAL LAW AND PRACTICE. PROCEEDINGS BEFORE JUSTICES OF THE PEACE.

N.B.—The following questions do not relate to the Summary Jurisdiction Act, 1879.

1. Define the difference between larceny and embezzlement.

2. In an indictment for forgery, is it necessary to allege the intent to defraud, and the name of the person intended to be defrauded?

3. A. paid his own cheque for 10*l.* to B., on the 1st April, 1880, for 100 cigars, which A. took away with him from B.'s shop, and, on the cheque being presented by B., he discovered that A. had an account at the bank on which the cheque was drawn, but no sum amounting to 10*l.* to his credit on that day, nor was his credit increased afterwards. Was A. guilty of any offence, and, if so, what?

4. State three of the principal malicious injuries (felonies) to property, for which a sentence of penal servitude can be passed.

5. How many witnesses, whose names are indorsed on a bill of indictment, is it necessary for a grand jury to examine, before ignoring such bill?

6. If A. sells, or exposes for sale, by retail, any intoxicating liquor, without being duly licensed to sell the same, is he liable to any penalty, and, if so, what? and what summary tribunal has the power to adjudicate?

7. Have justices in petty session, or stipendiary magistrates, any power to deal summarily in cases of larceny, without the accused pleading guilty; and if so, is there any limit as to the value of the property alleged to be stolen?

8. If justices in petty session, or a stipendiary magistrate, give a certificate of conviction or dismissal to an accused person, after hearing and deciding a case summarily, in what way does such certificate operate?

9. If a person shall have obtained game by unlawfully going on land in search or pursuit of game, is such person liable to any penalty, and, if so, what, on summary conviction?

10. In proceedings upon summary convictions under Jarvis's Act (11 & 12 Vict. c. 43), where a summons has been served upon an accused person to appear, and he does not so appear at the time and place specified, what powers have the justices of the peace or magistrate?

VI.—THE LAW AND PRACTICE OF THE PROBATE AND DIVORCE AND ADMIRALTY DIVISION OF THE HIGH COURT OF JUSTICE AND ECCLESIASTICAL LAW AND PRACTICE.

1. Does the Court require the assent or intervention of the husband before granting probate to a *femme couverte* executrix, or administration to a *femme couverte* applicant, and, if so, to what extent?

2. Mention some of the cases in which it is made by statute

unnecessary to take out probate, or administration, to obtain payment or legal possession of personal estate belonging to a deceased person ?

3. Draw an oath for an administrator, who is entitled to the grant as the cousin-german, and one of the next-of-kin of the deceased, who was unmarried.

4. If an executor, in propounding a will, wishes to deny the interest of the party opposing it as next-of-kin, in what manner should he do so ?

5. What power has the Court of making a provision for a wife, as well during the progress of a Divorce Suit, as after its termination ? and when and how is such power exercised ?

6. In what case can the Solicitor, acting for a married woman in a suit for a judicial separation, recover the costs thereby incurred as a debt against the husband ? and what steps should he take for his own protection before instituting such a suit ?

7. A vessel is about to proceed on a voyage approved of by the majority of the part owners, and is being employed under a charter entered into by the ship's husband, appointed to act on behalf of all the owners ; but a part owner, holding a minority of shares, objects to the voyage being undertaken. What steps can he take for the protection of his property in the vessel, and with what result ?

8. State the contents of the " Preliminary Act " in an action for damage by collision between vessels, and by whom must it be filed, and when ?

9. Mention the various species of ecclesiastical courts, and state the jurisdiction of each.

10. Enumerate some of the sentences which such courts have power to pronounce, and state the effect of each.

QUESTIONS FOR THE HONOURS EXAMINATION.

November, 1880.

I.—THE PRINCIPLES OF THE LAW OF REAL AND PERSONAL PROPERTY AND THE PRACTICE OF CONVEYANCING.

1. Define and illustrate general, specific, and demonstrative legacies ; and explain the practical distinction between them.

2. A man dies intestate, leaving the following relatives : a widow, mother, uncle, brother of the half blood, nephew (child

of deceased sister), two nieces (children of deceased brother), and grandnephew (grandchild of another deceased brother). How will the personal estate of the intestate be distributed under the statute?

3. Under what circumstances can infants appoint their own guardians? What are such guardians called, how are they appointed, and what powers are given to them by law?

4. A. being in expectation of death, handed to B. a desk containing the articles specified below, with an intention of making them the subject of a "*Donatio Mortis Causa*." He shortly afterwards died. How far did the gift take effect? State in detail the reasons for your answer and the law on the subject.

Bonds, promissory notes, and cheques, some payable to the bearer, and some payable to A.'s order, Bank of England notes, country bank notes, bills of exchange, some endorsed in blank, and some to the order of A., and a certificate of railway stock held by A.

5. What is the effect upon the legal positions of the vendor and of the purchaser respectively of verbal declarations, made by an auctioneer at a sale, qualifying particulars and conditions of sale, which are afterwards duly signed.

6. Define and give examples of a conditional limitation and a contingent remainder respectively; and state in what important respect they formerly differed.

7. A. having a contract only for a lease for 99 years, purported to demise the land to B. by way of mortgage for the whole term less three days. He subsequently acquired the lease, and demised the land to C. for the whole term less three days. What are the respective positions of B. and C.? Give the grounds of your answer.

8. A testator, by his will, settles his copyhold estate upon his eldest son A. for life, with remainder in fee to B., his second son, and gives the power of sale during A.'s lifetime to a trustee. A. was not admitted upon the testator's death. The trustee exercises his power of sale, and the purchaser requires that A. should be admitted. Can this be insisted upon? State the reason for your answer.

II.—THE LAW, PRACTICE, AND PROCEDURE OF THE CHANCERY DIVISION.

9. Explain the doctrine of *notice*, and apply it to the following case:—A. purchases an estate, with notice of an incum-

brance held by B.; A. sells to C., who has no notice, and C. sells to D., who has notice. Can B. claim against D., and does it affect the question whether the estate sold is legal or equitable?

10. What is the general rule as to *conversion*? A testator directs his real estate to be sold, and bequeaths the proceeds to three legatees. In consequence of the death of one of them in the testator's lifetime he dies intestate as to that share; who takes it on his death?

11. State the order in which the different properties of a testator are, as between such properties, liable to satisfy his debts in the event of the estate being administered by the court.

12. Illustrate the doctrines of *tacking* and *consolidation* of mortgages.

13. What is the ground on which courts of equity have acted to compel specific performance of contracts? State cases in which, although the ground exists, the court will not act.

14. Take the case of a second mortgagee of real estate. The mortgagor is dead, and there is reason to suppose that he died insolvent. Explain the different proceedings which can be taken in the interest of the mortgagee, and specify which of them would have to be prosecuted in the Chancery Division.

15. What are the different modes in which an action may be tried, and what are the rights of the parties respectively as to the mode of trial?

16. Give the outline of the proceedings in an action on the part of plaintiff and defendant.

III.—THE LAW, PRACTICE, AND PROCEDURE OF THE COMMON LAW DIVISION AND OF THE COURT OF BANKRUPTCY.

17. If a draft to his order be delivered by A. to another (say C.), endorsed by A. specially to B., and such delivery is made for the purpose of handing the draft to B., and the draft be misappropriated by C., who forges the endorsement of B., and hands the draft to his (C.'s) bankers for collection, who receive the amount; has A. any, and if any, what remedy against the bankers to recover the amount; and state the general principles of law applicable to this question, and cite any case which governs it.

18. A. allows and pays his wife a yearly sum of money for dress sufficient for her station in life, but upon condition that she is not to pledge his credit. Notwithstanding this, the wife

obtains certain articles of dress from B., a draper, on credit. The prices are reasonable, and the articles are necessities, in the sense that they are suitable to the wife's degree and condition in life. The agreement between her and her husband that she will not pledge his credit is unknown to B., the tradesman. Can B. maintain an action against A. for the price of the articles sold to the wife? State shortly the law upon the subject.

19. What advice would you give C. and Co. in the following case? and give reasons for the advice you give :—C. and Co. shipped a cargo of beans on board F. and Co.'s ship, under a bill of lading from Alexandria to Glasgow, with leave to call at intermediate ports, deliverable to C. and Co.'s order, on payment of freight by consignee. The ship called at Liverpool, and on going out met with a collision (a peril excepted in the bill of lading) and was obliged to put back for repairs, which detained her a few days. The beans were damaged by sea-water in consequence of the collision, to which damage the attention of the master was called, and to the fact that they would be seriously injured unless taken out and dried at once, and then reshipped. The master refused to take that course. The beans were carried on to Glasgow, and on their arrival they were much deteriorated in value beyond what they would have been had they been dried at Liverpool, where there was plenty of accommodation for doing so, during the time the ship was detained there.

20. A. and B. are adjoining landowners. A. requires certain lawful work to be executed on his own premises, and employs C., a contractor, to execute such work. In the course, and in consequence thereof, injury is caused to the premises of B., he being entitled to the support for his house of A.'s soil. C., the contractor, before commencing the work, has undertaken the risk of supporting B.'s house during the work, and to make good any damage and satisfy any claims arising therefrom. Is A. thereby relieved from liability in respect of the damage done, and, if so, why? If not, upon what principle of law is he liable?

21. Can a policy of marine insurance be assigned so as to enable the assignee to sue upon it in his own name? and if so, can it be assigned after loss of the ship or goods the subject of the insurance? Refer, if you can, to any statute and decided case upon the subject.

22. A building contract contains a clause that if the contractor becomes bankrupt before the completion of the work the architect may appoint other persons to complete it, and that he, the architect, shall have power to seize and retain all materials, implements, and plant. The contractor, after executing part of the work, files his petition for liquidation, and afterwards, and before the appointment of a trustee, the architect takes possession of the materials, implements, and plant. What are the rights of the employer and trustee in bankruptcy respectively, with reference to the possession thereof?

23. Husband and wife separate by mutual consent. Trustees for the wife are appointed, and a deed of separation executed. The deed provides for the payment of an annuity to the wife, but annuity to cease and trusts of the deed to become void in case of the happening of any one of the following events:—
 1. Wife not remaining chaste. 2. Wife annoying husband.
 3. Wife receiving pecuniary help from others. 4. Husband and wife becoming reconciled and living together again. The husband afterwards becomes bankrupt, and no one of the above events has happened. What are the rights of the wife's trustees as to proving on the husband's estate in respect of the annuity, and what steps should they take?

24. Describe the nature and effect of the writs of *certiorari* and *procedendo* respectively, and state the necessary steps to be taken in order to obtain the same.

IV.—THE LAW, PRACTICE, AND PROCEDURE IN CRIMINAL CASES, IN THE PROBATE, DIVORCE, AND ADMIRALTY DIVISION, AND IN ECCLESIASTICAL LAW.

25. How far is compulsion or necessity an excuse for criminal misconduct? A man is convicted of stealing jewellery, some of which his wife was found wearing after the theft and she is tried for receiving stolen goods, knowing them to have been stolen. How should the jury be directed?

26. State the rule as to the competency of husband and wife to give evidence for or against the other in criminal and divorce cases.

A. administers a drug to a woman with intent to procure abortion, and marries her after indictment but before trial. Supposing her evidence to be essential, can the case proceed?

A husband presents a petition for divorce on the ground of his wife's adultery. Can the co-respondent call the petitioner to prove the latter has been guilty of adultery?

27. How far does the possession of delusions upon particular subjects only affect testamentary capacity?

A testator is of good general business habits, and continues in the management of his affairs till his death, but he is for some years under the delusion that he is a member of the Royal family. By his will he leaves his property to his wife for life, and after her death to members of the Royal family, to the exclusion of brothers and sisters. Is the will valid or invalid, either wholly or in part?

28. Is a suit for divorce on the ground of adultery in the nature of a criminal or a civil proceeding? Is the insanity of the respondent a bar to the suit when the insanity occurred (1) before petition? (2) after petition and before decree *nisi*; (3) after decree *nisi* and before decree absolute? If a suit can proceed in any of these cases, how can the respondent be defended? Can a suit be instituted or proceed if the petitioner be or become insane?

29. Explain the nature and objects of an action for possession in Admiralty matters.

In such an action the owners of 40 shares in the ship agree on a certain voyage, but the owners of the remaining shares dissent. How will the Court deal with the matter?

30. What general doctrines have been laid down by the Privy Council in ecclesiastical cases (1) as to the theological soundness or unsoundness of opinions; (2) as to the construction of the articles and liturgy; (3) as to different interpretations of which the articles admit; (4) as to jurisdiction to settle matters of faith?

APPENDIX (B).

GLOSSARY OF TECHNICAL LAW PHRASES.

A.

ABATEMENT. The act of abating, *i.e.*, beating down or destroying, putting an end to. The principal instances in which the word is used are the following :—1. Abatement of freehold. 2. Abatement of nuisances. 3. Abatement of legacies.

ABDUCTION. The taking away of any one. Thus, the taking away a child from its parents against their will, either by fraud, persuasion, or open violence, are all denominated abduction.

ABSQUE IMPETITIONE VASTI. Without impeachment of waste.

ACCEDAS AD CURIAM. A writ which lies for a man when he has received a false judgment in a hundred court or court baron.

ACCESSARY is a person guilty of a felonious offence, not by being the actor or actual perpetrator of the crime, nor by being present at its performance, but by being in some way concerned therein, either before or after its commission. If *before* its commission, he is termed an *accessary before the fact*, if *after*, an *accessary after the fact*.

ACCOMMODATION (Bill of Exchange). Such a bill is where it is accepted without any value having been received by the acceptor, for the purpose of raising money thereon by discount. It is called an *accommodation bill*, because it is accepted expressly for the purpose of accommodating the drawer or some other party, and upon the understanding that the acceptor is to be relieved from all liability incurred by having given his acceptance.

ACCORD. A satisfaction agreed upon between two parties when one is injured, and which is to be the recompense for the injury.

ACCOUNT STATED, is a balanced account; an account which is no longer open or current, but which has been closed or wound up between the parties.

ACTION, is defined by the *Mirror* to be "the lawful demand of one's right." It is also stated to be the *jus persequendi in judicio quod sibi debetur*. It is, however, the formal means prescribed by law for the recovery of our rights, and the redress of civil injuries.

ADEMPITION OF A LEGACY, signifies the taking away of a legacy. Thus, if a father having bequeathed a legacy of 100*l.* to a child, then gives the child 100*l. inter vivos*, the gift adeems the legacy.

AD VALOREM DUTIES, are duties the amount of which is regulated according to the value of the property upon which, or in relation to which, the duties are imposed. They now especially refer to the duties imposed upon conveyances, leases, &c.

ADVOWSON. The right of presentation to a church or benefice. They are of two kinds—*appendant* and in *gross*. They are also either *representative*, *collative*, or *donative*.

ALIBI. This word signifies that mode of defence in a criminal prosecution which the accused party resorts to in order to prove that he could not have committed the crime with which he is charged, because he was in a different place at the time.

ALIEN. An alien is a person born in a foreign country, out of the allegiance to the Queen. To *alien* lands, &c., is to convey or transfer them.

ALIMONY. That allowance which is made to a woman for her support out of her husband's estate, when she is under the necessity of living apart from him.

ALLOCATUR. The Master's certificate of the sum allowed after taxing an attorney's bill is so termed.

ALLODIUM. Free from any rent or service. The tenure by which lands were held before the Norman Conquest.

AMICUS CURIÆ. "A friend of the court." When a judge is doubtful or mistaken in point of law, a stander-by may inform the court thereof as *amicus curiæ*. The counsel in court frequently act in this capacity when they happen to be in possession of a case which the judge has not seen, or does not at the moment remember.

AMY (AMICUS). "A friend." Thus, infants are said to sue by *prochein amy*, that is, by their next friend.

APPENDANT. Annexed or appended to. As where an advowson or right of common is *appendant* to a manor.

APPRENDEE. A profit *apprendre* means a fee or profit to be taken.

APPROVE. To improve. To approve a common, means to inclose and improve it.

APPROVER. Generally used to denote that a person who is indicted for treason or felony has made a confession before plea, and accuses his accomplices in the same crime to obtain a pardon.

APPURTENANCES. Where a conveyance is made of a house "with the appurtenances," the garden, curtilage, and close adjoining to the house, and on which it is built, will pass with it, being included in the word *appurtenances*.

ARBITRATION, is the submitting of matters in dispute to the judgment of some person or persons called an arbitrator or arbitrators.

ARBITRATOR. See tit. "Arbitration."

ARRAIGN. To arraign a prisoner is to call him to the bar of the court to answer the matter charged against him in an indictment.

ARREST OF JUDGMENT, is the withholding or staying of judgment notwithstanding a verdict has been given for the defendant. This motion is made for defects of substance appearing on the face of the record not amendable or cured by the verdict. But see hereon 15 & 16 Vict. c. 76, and 36 & 37 Vict. c. 66.

ARSON, is the crime of wilfully and maliciously burning the house or outhouse of another person.

ASPORTATION. The carrying away of goods.

ASSETS. Property of a saleable nature in the hands of the executor or administrator, sufficient or *enough* to make him chargeable to a creditor or legatee so far as that property will extend. Assets are divided into personal assets and assets by *descent* or *real*, the latter being lands and tenements.

ASSIZE. See *ante*, p. 44.

ASSUMPSIT. This word is ordinarily used in two senses; first, to signify a promise; secondly, an action to recover damages for the breach of a promise.

ATTACH. To attach means to take or apprehend by command of a judicial writ termed an attachment. It is the mode of punishment usually resorted to in cases of contempt of court.

ATTACHMENT. See tit. "Attach."

ATTAINDER. The taint, stain, or corruption of blood which the law attached to a criminal who was capitally condemned for treason. Now, however, no judgment for any treason or felony causes corruption of blood: (33 & 34 Vict. c. 23.)

ATTORNMENT. The acknowledgment by a tenant of a new lord, on the alienation of lands by the former lord. It is of feudal origin and is now abolished, with the exception perhaps of the case of a mortgage.

AUTRE DROIT. "Another's right." When a person holds an estate not in his own right, but in the right of *another*, he is said to hold it in *autre droit*; as, where a term of years goes to an executor or administrator, he holds it in *autre droit*.

AUTRE VIE. "The life of another." As, where a person holds an estate for the life of another, he has an estate *per autre vie*.

AVOWEY. When a distress has been replevied, and the distrainer pleads that the goods were taken in his own right, such a plea is called an *avowey*.

AWARD. The judgment or decision of one or more arbitrators.

B.

BAIL (BALLIUM). The setting at liberty of a person who is arrested in any action, civil or criminal, on his finding sureties for his reappearance. The word, however, is generally used to denote the sureties themselves, rather than the setting the defendant at liberty.

BAILMENT. A delivery of goods in trust upon an express or implied contract that the trust shall be faithfully performed on the part of the *bailee* (the person to whom the goods are delivered), as, if cloth be delivered (or *bailed*) to a tailor to make a suit of clothes, he takes it on an implied contract to render it again when made.

BARRETRY, signifies any act by the master or mariners of a ship of a fraudulent nature, and tending to the prejudice of the owners of the ship, without their consent or privity, as, by deserting or sinking the ship, or embezzling the cargo.

BASE FEE. A base or qualified fee is one that has some qualification subjoined thereto, and which must cease or be determined whenever such qualification is at an end; as, if lands be granted to A. and his heirs *tenants of the manor* of Dale; for whenever A., or his heirs, cease to be tenants of the manor of Dale the grant is defeated.

BASTARD. A person born out of wedlock. Such an one is not entitled either to his father or mother's name.

BENEFICE. An ecclesiastical living, or any church preferment. It must be given for life, not for years or at will.

BOCKLAND, was one of the titles by which the English Saxons held their lands, and being always in writing was hence called *bockland*, which signifies *terram codicillarium* or *librarium*, deed land or charter land. It was the same as *allodium*. This species of inheritance was usually possessed by the *Thanes* or nobles.

BOND, POST OBIT. A bond, the terms of which are to be performed *after the death* of a person therein named.

BOOKLAND. See tit. "Bockland."

BOTTOMRY, is in the nature of a mortgage of a ship, when the owner borrows money to enable him to carry on his voyage, and pledges the keel or *bottom* of the vessel as a security for the repayment; in which case it is understood that if the ship be lost the lender loses his money, and for this reason he was permitted to receive more than the legal rate of interest before the repeal of the usury laws.

BURGLARY, is the breaking and entering into a house or dwelling of another in the night with the intention of committing a felony.

C.

CAPIAS. "You take." The writ formerly used to arrest a defendant on mesne process. See hereon 1 & 2 Vict. c. 110, 32 & 33 Vict. c. 62.

CAPIAS UTLAGATUM. "You take the outlaw." A writ that is used for the purpose of arresting a man who has been outlawed. Outlawry in civil proceedings is by the 42 & 43 Vict. c. 59, abolished.

CAPUT LUPINUM. "The head of a wolf." An outlaw was formerly thought to have *caput lupinum*, and might, like that animal, be destroyed by anyone.

CAVEAT EMPTOR. "Let the buyer beware." A maxim of law applicable to the sale of goods and chattels, and sometimes to land.

CEPI CORPUS. "I have taken the body." When a defendant has been arrested under this writ by the sheriff, and has him in custody, he makes this return to the writ.

CERTIORARI. "To be made more certain." A writ issuing to order the record of a cause to be brought before a division of the High Court.

CESTUI QUE TRUST (OR USE). He for whose benefit lands or tenements are held. The beneficial owner.

CESTUI QUE VIE. He for whose life lands or tenements are granted. As, if A. grants lands to B, during the life of C., here C. is the *cestui que vie*.

CHAMPARTY, OR CHAMPERTY. Maintaining a litigation in order to share in the benefit of the verdict or judgment.

CHAPELRY, is the same thing to a chapel as a parish is to a church, i.e., the precincts and limits of it.

CHARTER-PARTY. The instrument of freightage, or articles of agreement, for the hire of a vessel.

CHATTEL INTEREST, is an interest or estate in chattels or goods, or in lands not amounting to a freehold.

CHIROGRAPH. A counterpart. As the chirograph of a fine.

CHOSE. "A thing." *Chose in action* is sometimes used to signify the right of bringing an action, and sometimes the thing itself which forms the subject of that right; but it more properly includes both.

CIRCUIT PAPER. A paper containing a statement of the times and places where the several assizes will be held.

CITATION. See *ante*, p. 72.

CLAUSUM FREGIT. "He broke the close." Every unwarrantable entry on another's soil the law entitles a trespass by *breaking his close*.

CODICIL. A supplement or addition to a will made by the testator which adds to, alters, or explains the will.

COGNOVIT ACTIONEM. An instrument signed by the defendant in an action, confessing the plaintiff's right of action, and empowering him to sign judgment against the defendant in default of the defendant paying him the amount due within the time stipulated in the *cognovit*.

COMMISSIONS OF ASSIZE, are commissions or authorities empowering the judges to sit on the circuit for the purpose of holding the assizes.

COMMISSIONS OF LUNACY, are commissions issuing out of the Chancery Division of the High Court authorising certain persons to inquire whether a person represented to be a lunatic is one or not, and if so, that the Queen may have the care of his estate.

COMMITMENT. The sending or committing a person who has been guilty of a crime, to prison or gaol by warrant or order.

COMMON, OR RIGHT OF COMMON. A profit which a man has in the land of another, as, to feed his beast, catch fish, dig turf, or cut wood, called respectively common of pasture, common of piscary, common of turbary, common of estovers.

COMMON BENCH. The Court of Common Pleas is sometimes termed the Court of Common Bench.

COMMON LAW, termed the *lex non scripta*, is used in various senses ; sometimes as contra-distinguished from the statute law, sometimes from the civil and canon laws, and especially from equity. See further, *ante*, p. 42.

COMPTROLLER. An officer who has the inspection, examination, or controlling of the accounts of collectors of public money.

CONDONATION. The *forgiving* by a husband or wife of the other's adultery, &c.

CONFESSION AND AVOIDANCE. Pleadings in *confession* and *avoidance* are those which admit or *confess* the last pleading of the adversary to be true, but allege some new matter altering the legal effect of it, and show that the party thus pleading is nevertheless entitled to the judgment of the court.

CONSANGUINITY. Relationship by blood.

CONTEMPT. Contempt of court signifies a disobedience to the rules, orders, or process of the court, and is punishable by attachment.

CONTRACTU. Actions *ex contractu* are actions founded on a *contract* express or implied.

COPARCENARY. When lands of inheritance descend to two or more females, the interest is termed an estate in coparcenary.

COPYHOLDS. Copyhold lands are lands held by copy of court roll, at the will of the lord, and according to the custom of the manor of which they form parcel.

COUNT. This word is taken from the French word *conte*, signifying a narrative. A section of an indictment is called a count.

COVENANT. A covenant is a kind of promise contained in a deed, to do a direct act or to omit one; and is a species of express contract, the violation or breach of which is a civil injury. The person who makes the covenant is termed the *covenantor*, and he with whom it is made the *covenantee*.

CRIME. The distinction between a *crime* and a civil injury is, that the former is a breach and violation of civil rights which belong to individuals, considered in reference to their effect on the community in its aggregate capacity; while the latter is an infringement of the same rights considered simply as individuals.

CROWN OFFICE, is an office of the Court of Queen's Bench, the officer of which is usually styled the Clerk of the Crown. In this office the Attorney-General and Clerk of the Crown exhibit informations for crimes and misdemeanors, the one *ex officio*, the other commonly by order of the court.

CROWN PAPER, is a paper containing the list of criminal and magisterial cases which await the hearing or decision of the Court of Queen's Bench.

CUM TESTAMENTO ANNEXO. "With the will annexed." When a testator has not named any executor of his will (or to the like effect) administration *cum testamento annexo* is granted.

CUMULATIVE LEGACY. Where two legacies are given to one person by the same will, it frequently becomes a question whether one is merely in substitution for the other, or whether the testator intended the legatee to take both, in which latter case the legacies are said to be cumulative.

CURIA ADVISARE VULT. "The Court wishes to advise." Abridged thus: *Cur. adv. vult.* When the court takes time to consider its judgment, it is signified by the above words.

CUSTOM, is a law not written but established by long usage and the consent of our ancestors. Customs are either *general* or *particular*.

CUSTOS ROTULORUM. An officer to whom the custody of the records or rolls of the sessions are committed; he is always a justice of the *quorum*, and has the power of nominating the clerk of the peace, which office he cannot sell for money.

CY PRES. "As near as," or "Approximation." This doctrine is applied where a testator has made bequests which cannot be literally carried out, but the courts do so *as near* as they can according to his intention.

D.

DAMAGE FEASANT. "Doing damage." When a man finds another's beasts wandering in his lands damage feasant, he may distrain them.

DAMNUM ABSQUE INJURIA. "Damage without an injury." Damage for which no action will lie.

DE BENE ESSE. In law signifies *conditionally*.

DE BONIS NON administration. Where an executor or administrator, not having fully administered his testator's or intestate's goods, dies without leaving any executor, this species of administration must be granted to the original testator's or intestate's goods.

DECREE. The judgment of a court of equity is so called.

DE FACTO. A thing done *de facto* signifies a thing actually done.

DEFEASANCE. A collateral deed made at the same time with some other principal deed or instrument, and containing certain conditions, upon the performance of which the intention of the principal deed may be defeated or rendered null and void.

DEFORCEMENT, is the wrongful holding of any lands or tenements to which another has a right, but who has never yet had possession under that right.

DEFORCER. See tit. "Deforcement."

DEL CREDERE, is taken from an Italian mercantile phrase, signifying guarantee. When a factor sells goods on a *del credere* commission, he, for an additional premium beyond that which is usual, warrants the solvency of his buyers, when he sells the goods on credit.

DEMURRAGE. In charter-parties a certain time is allowed for the freighter to load or unload his vessel; and if he does not do this within the time specified, he has to pay a certain sum per day for every day beyond that time, which extra time and payment are called *demurrage*.

DEMURRER. A demurrer is a pleading denying the sufficiency in *point of law* of the adversary's last pleading, and raises an issue of law which is argued before and decided by the court.

DETINUE. An action of detinue is brought to recover specific goods which are *detained*, or their value, at the option of the plaintiff.

DEVASTAVIT. A *devastavit* is, strictly speaking, a return made by the sheriff to a writ of execution against an executor or administrator, signifying that he has wasted the goods of his testator, or intestate, as the case may be.

DE VENTRE INSPICIENDO. "Of inspecting the belly." A writ *de ventre inspiciendo* is a writ which lies for an heir *presumptive* when the widow feigns herself with child, to see whether she be with child or not, and if she be pregnant to keep her under proper restraint till she give birth to the child. This is done so that the widow may not produce a fictitious heir.

DISABILITY, is synonymous with incapacity. The most ordinary cases of disability are where the party is an infant, a *feme covert* or non *compos mentis*.

DISCOVERT. An unmarried woman or widow, or one not within the bonds of matrimony.

DISFRANCHISE. To take away from or divest certain places or persons of any privilege or liberty.

DISSEISIN. When one man invades the possession of another, and by force or surprise turns him out of the occupation of the lands, this is termed a *disseisin*.

DIVORCE. The separation of husband and wife by force of law. See hereon the stat. 21 & 22 Vict. c. 85, and *ante*, p. 68, *et seq.*

DOMESDAY-BOOK, is a book compiled in the time of William the Conqueror, consisting of two volumes, and containing the details of a great survey of the kingdom. It was begun in the year 1081, and was completed in 1086. If a question arises whether or not lands are of ancient demesne, it is decided by this book.

DOMICILE, is the fixed and permanent residence of a person in a country not his own.

DONATIO MORTIS CAUSA. A gift made by one who is in immediate prospect of death.

DOWER, is an estate for life which the law gives the widow (married before the 1st of January, 1834) in a third part of all the lands and tenements of which her husband was seised in fee-simple or fee-tail in possession, at any time during the coverture, and of which any issue which she might have had might by possibility have inherited.

DUCES TECUM. "Bring with thee." A witness required to produce a deed or other document at the trial of any cause is served with a *subpoena duces tecum*.

DURANTE MINORE ETATE. An administration granted to some person during the minority of some other person, who would otherwise be the administrator.

DURESS. If a man do any act, however solemn, under fear or threat of death or mayhem in case of non-compliance, he may afterwards avoid it; and the same is a sufficient excuse for the commission of many misdemeanors.

E.

EIGNE. The first-born, or eldest.

ELECTION, is the choosing between two rights by a person who derives one of them under an instrument in which a clear intention appears that he shall not enjoy both. As, if A. by his will bequeath B.'s property to C., and gives a legacy to B., B. cannot claim the legacy and also retain his property, but will be put to his election.

ELEGIT. "He has chosen." A writ of execution directed to the sheriff empowering him to seize the goods and chattels, and if there be not enough, the lands and tenements, for debt or damages due on a judgment.

ELISORS. If the sheriff who should return the jury or execute process, is in any way interested, this duty falls upon the coroner, and if he be interested also, then the process is executed by two persons named by the court, and sworn, and these two are called *elisors*, or electors.

EMBEZZLEMENT, is a crime distinguished from larceny properly so called, as being committed in respect of property which is not at the time in the actual legal possession of the owner.

EMBLEMENTS, are various vegetables, which though affixed to the soil, are deemed personal property, and on the death of an intestate go to the administrator and not to the heir. Those vegetables only which are raised annually by labour and manurance (which are considerations of a personal nature) are called emblements.

EN AUTRE DROIT. "In the right of another." As, where an executor sues for his testator's debts, he sues in the right of another.

ENFEOFF. To enfeoff means to convey an estate of freehold by deed of *feoffment*.

ENFRANCHISEMENT. Generally applied to copyhold lands, which means changing them into freeholds.

ENTAIL. To entail lands means to limit the descent thereof to *lineal* heirs.

EQUITY OF REDEMPTION, is the right which *equity* gives to a mortgagor of *redeeming* his mortgaged estate after the time for repayment of the sum borrowed has gone by.

ESCHEAT. The resulting back to the original grantor or lord, of lands held in fee-simple, for want of heirs, or corruption of blood of the tenant. But see 33 & 34 Vict. c. 23.

ESCROW. A scroll or writing. Where a deed is delivered conditionally, it is so termed, and is not to take effect as a deed till the condition is performed, when it becomes a good deed.

ESCUAGE. The ancient tenure of knight's service was commuted into a money payment called *scutage* or *escuage*.

ESTATE. The word *estate* is generally used to denote the interest a man may have in lands or in any other subject of property. An estate in lands and tenements may be considered, first, in reference to the nature of the ownership; secondly, in reference to the quantity of interest of which the estate is composed.

ESTOPPEL. Where a man is precluded from alleging or denying a fact in consequence of his own previous act, allegation, or denial to the contrary, it is termed an *estoppel*.

ESTOVERS. Every tenant for life, unless restrained by covenant or agreement, may of common right take upon the land demised to him reasonable *estovers* or *botes*, i.e., an allowance of wood for fuel, repairs, and the like.

ESTREATED. When recognisances are forfeited they are said to be *estreated*.

EX CONTRACTU. Actions *ex contractu* are those which are founded upon a contract, express or implied.

EX DELICTO. Actions *ex delicto* are such as are founded on some wrong or injury committed against the person or property of a man, as distinguished from such as are founded on the breach of a contract.

EXECUTOR DE SON TORT. One who takes upon himself the duties of an executor without any authority, is so termed.

EXEMPLIFICATION, signifies in law a transcript or copy; thus an exemplification of a recovery means a transcript of the recovery roll.

EXIGENT, or EXIGI FACIAS. A writ which is made use of in the process of outlawry.

EX OFFICIO. By virtue of office.

EX PARTE. Of one part; partly.

EX POST FACTO. From an after fact; after a deed is done.

EXTENT. A writ issued out of the Exchequer Division of the High Court to recover debts due, directly or indirectly, to the Crown.

EXTRAJUDICIAL. An extrajudicial act is any act done by a judge beyond his proper and legitimate authority.

EXTRAPAROCHIAL. Out of the bounds or limits of a parish.

F.

FALSIFY. To prove a thing to be false.

FEE. Spelman defines a *fee* to be "the right which the vassal or tenant hath in lands to use the same and take the profits to him *and his heirs*, rendering to the lord his due services for the same." The word is now used in connection with the word *estate*; an estate in *fee simple*, or shortly, in *fee*, is an estate to a man and his heirs absolutely.

FEE-FARM, signifies that lands are held of another in *fee*, in consideration of such rent as the premises are reasonably worth (not less, however, than the fourth of its value), and without homage, fealty, or any other services than are specified and set forth in the deed of feoffment whereby the estate was created. This rent reserved is called a *fee-farm rent*.

FEIGNED ISSUE. A fictitious issue. A feigned issue is a means adopted of trying disputed questions of fact under the Interpleader Act, &c. It may be either in the old form of a wager, or in the form given by the stat. 8 & 9 Vict. c. 109.

FELO-DE-SE, is a self-murderer; a felon of himself.

FELONY. Felony, in the general acceptance of the English law, comprises every species of crime which occasioned at common law a forfeiture of lands and goods. But see 33 & 34 Vict. c. 23.

FEME COVERT. A married woman.

FEME SOLE. An unmarried or single woman.

FEOD, FEUD, FIEF, OR FEE. A tract of land acquired by the voluntary and gratuitous donation of a superior, and held on condition of fidelity and certain services which were in general of a military nature. The donee of the land took the oath of fealty (*juramentum fidelitatis*); and on breach of the conditions and oath the land reverted back to the donor or his heirs.

FEODAL, OR FEUDAL. Relating or belonging to a feod or fee.

FEOFFMENT. A feoffment is the gift or grant of honours, castles, manors, messuages, lands, houses, or other corporeal hereditaments to another in fee simple, accompanied by a formal delivery up of possession, called livery of seisin. "It is," says Coke, "properly a conveyance in fee, yet it is improperly called a feoffment when only an estate of freehold passes."

FERÆ NATURÆ. "Of a wild nature." Animals *feræ naturæ* are not subjects of property, such as foxes, wild fowl, &c.

FIAT. "Let it be done." A short order or warrant of a judge commanding or permitting something to be done.

FICTIO JURIS. A fiction of law.

FIDUCIARY ESTATE. An estate which is held in trust.

FIERI FACIAS. "Cause it to be done." A writ of execution directed to the sheriff commanding him to levy of the goods of the defendant the sum due, &c.

FINE. A fine was one of the ancient modes of barring entails and dower, &c. In its nature it was a fictitious action between the demandant and tenant, and compromised by leave of the court, and thus called a fine, because it puts an *end* to the suit or controversy.

FLOTSAM, is a word signifying any goods that are lost by shipwreck, and lie *floating* or swimming on the top of the water, and which the Lord Admiral is entitled to by virtue of his letters patent.

FOLK-LAND. The land of the common *folk*, held by no assurance in writing, but distributed amongst the common folk or people at the pleasure of the lord, and taken back at his will and discretion, being a species of *villeinage*, and neither strictly feudal, Norman, nor Saxon in its tenure, but compound of them all, the tenants being called villeins.

FORECLOSURE. Foreclosure of the equity of redemption is barring the mortgagor's right to redeem his mortgaged estate.

FORMA PAUPERIS. "In the form of pauper." A person is allowed to sue *in forma pauperis*, on counsel certifying that he has a good cause of action, and on his making affidavit that he is not worth 5*l.*, his wearing apparel and the subject-matter of the suit excepted.

FRANCHISE. A privilege or exemption from ordinary jurisdiction. Franchises are of several kinds.

FRANKALMOIGN. Tenure in frankalmoign is that by which a religious corporation, aggregate, or sole, holds lands of the donor, to them and their successors for ever, upon consideration of praying for the souls of the donor and his heirs in time or eternity, or the like.

FRANK MARRIAGE. Where lands are given to a man and his wife, who is the daughter or cousin of the donor, to hold to them and the heirs of their bodies, they are tenants in special tail; and the lands are said to be held in *frank marriage*.

FREEBENCH, is that estate in copyhold lands that a wife has after the death of her husband for her dower, according to the custom of the manor in which the lands form parcel.

FREEHOLD, is used to denote that a man has an estate for life at least in lands of free tenure.

G.

GARNISHEE. The party in whose hands money is attached. See hereon 17 & 18 Vict. c. 125.

GAVELKIND. By the custom of *gavelkind*, which chiefly prevails in the county of Kent, lands descend to all the sons together. The tenant may convey his interest in the land at the age of fifteen years by feoffment.

GIST. Gist of an action means the very foundation of it, the ground which maintains it.

GRAND SERJEANTY. See tit. "Serjeanty."

GROSS. Separate, independent, not annexed or appendant.

GYET. See tit. "Gist."

H.

HABEAS CORPUS. A writ of right for those who are aggrieved by illegal imprisonment. See hereon the 31 Car. 2, c. 2, commonly called the Habeas Corpus Act, and the 54 Geo. 3, c. 100.

HABENDUM, is one of the formal parts of a deed; it is so called because it begins with the words *to have*.

HEIR. The person to whom the *real estate* of the ancestor descends in case the ancestor dies intestate.

HEIR APPARENT, is one who, should he outlive the ancestor, will be heir at all events, if the ancestor dies intestate, as, the eldest son.

HEIR PRESUMPTIVE, is one who, were the ancestor to die intestate immediately, would be his heir, but whose hopes may be cut off by the birth of a nearer heir; as, the hopes of a daughter by the birth of a son.

HEIRELOOMS. Such inanimate personal chattels as go to the heir along with the inheritance, and not to the executor of the deceased.

HEREDITAMENTS, is a word of the most comprehensive signification that can be used in deeds, it signifying *anything* that can be *inherited*. Hereditaments are of two kinds, *corporeal* and *incorporeal*, the former being such as are of a tangible and substantial nature, and are objects of the senses, such as lands and tenements; the latter being rights issuing out of or annexed to, or exercisable with, things corporeal, as rents and the like.

HERIOT. The best beast, which by the custom of some manors is due to the lord upon the death of the copyhold tenant.

HOMICIDE, is the killing of any human creature. It is divided into *justifiable*, *excusable*, and *felonious*.

HOTCHPOT. A blending or mixing together. As, when a person dies intestate, leaving several children, one of whom he has advanced in his lifetime, that one shall take no share in the distribution of the personal estate of the intestate, unless he will bring the amount advanced to him into hotchpot.

HOUSEBOTE, is necessary wood which a lessee for life or years has a right to take off the lands let to him, for the purpose of repairing the house, &c., upon the lands so let.

HUNDREDORS. Persons empanelled or fit to be empanelled on a jury upon a controversy arising within the hundred where the land in question lies.

I.

IGNORE. To be ignorant of. This word was indorsed on a bill of indictment by a grand jury when they rejected it. Now they use the words "no bill" or "not found."

IMPEACHMENT OF WASTE is a term used to show that the tenant has not the power to commit waste upon the lands granted to him. See further tit. "Waste."

IMPOUND. To impound is to place cattle, goods, or chattels taken under a distress in a lawful pound.

IMPROPRIATION. A benefice in the hands of a lay person.

INDEBITATUS ASSUMPSIT, is that species of the action of *assumpsit* in which the plaintiff first *alleges a debt*, and then an implied *promise* in consideration of the debt.

INDENTURE. Deeds or writings which are cut or *indented* at the top are called *indentures*. See hereon 8 & 9 Vict. c. 106.

INDICTMENT. An indictment is a written accusation of one or more persons of a crime or misdemeanor, preferred to and presented upon oath by a grand jury.

IN ESSE. In being; in existence.

IN FORMÂ PAUPERIS. In the form of a pauper. See tit. "Formâ Pauperis."

- INJUNCTION.** An injunction is a prohibitory writ granted by the different divisions of the High Court and by the Court of Bankruptcy against one or more parties to an action, forbidding certain acts to be done.
- INSOLVENT.** A person is said to be insolvent when his debts exceed his assets.
- INTERESSE TERMINI.** An interest in the term. It is that interest which a lessee for years has in the lands demised to him before he has actually become possessed of them by entry, upon which event he has an estate for years.
- INTESTATE.** A person is said to die *intestate* who dies without having made a will.
- INTRUSION,** is a species of injury by ouster or a motion of possession from the freehold by a stranger entering upon the lands after a particular estate of freehold is determined, before the remainderman or reversioner.
- IN VENTRE SA MERE.** In the mother's womb.
- IPSO FACTO.** From the deed, or by the fact itself.
- ISSUE,** is the disputed point or question to which the parties in an action have narrowed their several allegations, and upon which they are desirous of obtaining the opinion of a judge or jury.

J.

- JOINT TENANTS,** are those who hold the same lands by the same title (not being a title by descent), accruing at the same time, and there are no words importing that they are to take in distinct shares. They have a unity of possession, interest, title, and time in the commencement of that title.
- JOINTURE.** A settlement of lands or tenements made to a woman on her marriage, for the life of the wife at least.
- JUDGMENT,** is the sentence of the law pronounced by the Court upon the matter appearing from the previous proceedings in the suit. Judgments are either interlocutory or final.
- JURAT,** is the clause written at the foot of an affidavit, stating when, where, and before whom such affidavit was sworn.
- JUS AD REM.** The imperfect right to a thing in contradistinction to *jus in re*, which signifies the complete and perfect right in the thing.

K.

- KING'S (OR QUEEN'S) BENCH.** See *ante*, p. 43.
- KNIGHT'S SERVICE.** One of the ancient feudal tenures now abolished.

L.

LACHES, signifies slowness or negligence in seeking redress.

LARCENY, is the unlawful taking and carrying away of things personal, with intent to deprive the right owner of the same, and is either simple or accompanied with circumstances of aggravation.

LEVANT AND COUCHANT. Rising up and lying down. The words are used in reference to distress damage feasant. If a person is bound to keep fences in repair and does not, and cattle thereby stray into his lands, he cannot distrain them damage feasant till they have been levant and couchant, which is held to be one night at least.

LEX TERRÆ. The law and custom of the land, distinguished by this name from *lex civilis*.

LIBEL, is the malicious defamation of any person expressed by writing, print, figures, signs, pictures, or other symbols.

LIEN, is a qualified right or property which a person has in or to a thing arising from such person having a claim upon the owner of the thing.

LIQUIDATED DAMAGES, are damages the amount of which is fixed and ascertained.

LIS PENDENS. A pending suit or action.

LIVERY OF SEISIN. Delivery of possession. See tit. "Feoffment."

M.

MAGNA CHARTA. The great charter of English liberties granted by King John, and confirmed by Henry III.

MALA IN SE. Bad in itself.

MALFEASANCE, is the commission of some act which is unlawful.

MANDAMUS. A writ which issues out of the different branches of the High Court commanding the completion or restitution of some right.

MANSLAUGHTER, is the unlawful and felonious killing of another *without malice*, either express or implied, and may be either *voluntary*, as where one kills another in a sudden quarrel, or *involuntary*, as, where one doing an unlawful, though not felonious act, accidentally kills another.

MARKET OVERT. "Open market." Selling goods in market overt means selling them in an open market as opposed to selling them in private or a *covert* place.

MENSA ET THORO. A divorce *à mensâ et thoro* means *from bed and board*; which is now abolished, and a judicial separation substituted.

MERGER. Where a greater and a less estate meet in the same person in the same right, without any intervening estate, the less is swallowed up or *merged* in the greater.

MESNE PROCESS, is an intermediate process, which issues pending the suit upon some collateral interlocutory matter.

MISDEMEANOR. See *ante*, p. 65.

MISFEASANCE, is the wrongful commission of some act which is lawful.

MITTIMUS. A writ by which records are transferred from one court to another.

MODUS OR MODUS DECIMANDI. When the general law of tithing is altered, and a new method of taking them is introduced, it is termed a *modus* or *modus decimandi*.

MORTGAGE. From *mort*, death, and *gage*, pledge. A mortgage is a conveyance of lands by one person to another as a security for a sum of money borrowed. The person who makes the conveyance is called the *mortgagor*, and the party lending the money the *mortgagee*.

MORTGAGEE. See tit. "Mortgage."

MORTGAGOR. See tit. "Mortgage."

MORTMAIN, from the word *mort*, death, and *main*, hand. All purchases made by corporate bodies are said to be purchased in *mortmain*.

MURDER, is the act of a person of sound mind and discretion unlawfully killing any human being with *malice aforethought*, either express or implied.

N.

NATURALISATION. The making a foreigner a lawful subject of the state, or, as it is sometimes termed, the king's natural subject.

NE EXEAT REGNO, is a writ which issues out of the Chancery Division of the High Court to restrain a person from leaving the kingdom, when another has an equitable demand against him.

NIHIL OR NIL DICIT. "He says nothing." Where the defendant did not put in a plea to the plaintiff's declaration, the plaintiff was entitled to have a judgment by *default* or, as it was formerly expressed, *nil dicit* of the defendant.

NISI PRIUS. "Unless before." See, further, *ante*, p. 44.

NISI PRIUS RECORD. See *ante*, p. 45.

NOLLE PROSEQUI. A *nolle prosequi* was in the nature of an acknowledgment or undertaking by the plaintiff in an action, not to follow up his action or part of it.

NONAGE. Under twenty-one years of age in some cases, and under twelve or fourteen in others.

NON ASSUMPSIT. "He hath not promised." The name of the plea which occurred in the action of *assumpsit*, by which the defendant denied that he undertook or promised to do the thing which the plaintiff in his declaration alleged that he did promise to do. It is not sufficient, however, since the operation of the Judicature Acts, to give a mere general denial to the plaintiff's claim.

NON COMPOS MENTIS. Of unsound mind.

NON CONSTAT. "It does not appear." It is by no means clear or evident, &c.

NON EST FACTUM. "It is not his deed." A plea which occurred in an action of debt on bond or other specialty. As above stated, general denials are not now allowed.

NON EST INVENTUS. "He is not found." This return is made by a sheriff when he cannot find the defendant.

NONFEASANCE. The omitting to do what ought to be done.

NONJOINER. The not joining of any person or persons as a co-defendant or co-plaintiff.

NONSUIT, is where the plaintiff, finding that his evidence is not sufficient to obtain him a verdict, renounces or gives up the suit. A plaintiff cannot, however, be nonsuited against his will; he has the power to insist on the case going to the jury, and take his chance of a verdict.

NUDUM PACTUM. "A bare agreement." Where an agreement or contract contains no consideration, it is termed *nudum pactum*, upon which no action will lie, unless it is under seal.

NUL TIEL RECORD. "No such record." A plea pleaded in a trial by record.

NUNC PRO TUNC. "Now for then." Where a party has omitted to do some act, as to file an affidavit within the proper time, the court will sometimes allow it to be done afterwards, taking effect as if done at the proper time.

NUNCUPATIVE WILL. A will which depends upon mere oral evidence, and not by any writing. These wills are now void, except as to seamen dying at sea, or soldiers on actual service.

O.

OBLIGATION. An obligation or bond is a deed whereby a person obliges himself, his heirs, executors, and administrators to pay a certain sum of money, or to do some other act on a given day; he who so agrees to pay the money or do the act, is termed the *obligor*, and the party at whose request it is done, or the party obliged, is termed the *obligee*.

OBLIGOR. See tit. "Obligation."

OBLIGEE. See tit. "Obligation."

OFFENCE. An offence is either *capital*, which is punished with death, as, treason and murder; or not capital, not being punishable with death.

ONUS PROBANDI. The burden of proving.

OUSTED, signifies to be removed or put out; thus, ouster of the freehold means being put out of possession of the freehold.

OUSTER LE MAIN. "To remove the hand." Before the military tenures, with the rights of guardianship annexed to them, were abolished, an infant when he or she arrived of age sued out his or her livery of *ouster le main*, in order to get his or her lands out of his or her guardians' hands.

OVERT. "Open." An overt act signifies an open or manifest act.

OYER AND TERMINER. "To hear and determine." A commission of oyer and terminer is one under the Queen's great seal, directed to certain persons, among whom two common law judges are usually appointed, empowering them to hear and determine treasons, felonies, robberies, murders, and criminal offences in general.

O, YES, is said to be a corruption of the word *oyes*, "hark," or "hear ye."

P.

PAIS. Matter in *pais* signifies matter of fact.

PARAPHERNALIA, means something which the wife is entitled to over and above her dower. Under the term paraphernalia are included such apparel and ornaments of the wife as are suitable to her station in life.

PARCENARY, is the holding of lands jointly by *parceners* or *co-parceners*.

PAROL, signifies *verbal*, in contradistinction to that which is written.

PARTICULAR ESTATE. A particular estate is a limited legal interest in lands or tenements carved out of the absolute property or fee simple. As if A., being seised in fee of lands, grant them to B. for life, here B. has a particular estate, it being a *particle* or portion carved out of A.'s fee.

PENDENTE LITE. Pending the suit.

PER AUTRE VIE. For or during the life of another, for such a period as another person shall live.

PER CURIAM. By the court.

PERJURY. Lord Coke defines perjury to be a crime committed when a lawful oath is administered in some judicial proceeding to a person who swears wilfully, absolutely, and corruptly in a matter material to the issue or point in question.

PER MY ET PER TOUT. "By the half and by all." This phrase is applied to joint tenants, who are said to be seised *per my et per tout*.

PERPETUITY. The condition of an estate being rendered perpetually (or for a very long period of time) inalienable by the act of the proprietors. See *Cadell v. Palmer*, Tud. L. C. 321.

PETTY SESSIONS, are the ordinary sittings of justices for the city or division of a county for the granting and hearing of summonses, issuing warrants, hearing criminal cases previous to their being sent to the assizes or quarter sessions, allowing poor and highway rates, &c.

PLEA, is generally used to denote a mode of defence taken by a defendant in a civil action or criminal trial.

POSSESSIO FRATRIS, means possession or seisin of the brother. It is a maxim that *possessio fratris facit sororem esse heredem*, that is, that the possession or seisin of the brother will make his sister of the whole blood his heir in preference to a brother of the half-blood. But see now 8 & 4 Will. 4, c. 106.

POSTEA. When a Nisi Prius record was used in an action, the *postea* contained the substance of what took place at the trial and was entered on the record. It was called *postea* because it began with the word "afterwards."

POUNDAGE. Sheriff's poundage is an allowance made to him of so much in the pound upon the amount levied under an execution.

PRÆMUNIRE, is a species of offence affecting the Queen (or King) and her government, though not subject to capital punishment.

PREBEND. The rents and profits belonging to a cathedral church.

PRENDER. The right or power of taking a thing before it is offered.

PRESCRIPTION, is a personal usage. A title which a person acquires to lands by long and continued possession is called a prescriptive title.

PRESENTATION, is the act of presenting a clerk to the bishop by the patron.

PRIMER SEISIN. Before the military tenures were abolished, if any of the king's tenants *in capite* died seised of a knight's fee, the King was entitled to receive of the heir, provided he was of full age, one whole year's profit of the lands if they were in possession, and half a year's profits if they were in reversion expectant on a life estate.

PRIMOGENITURE. The right of the eldest son to succeed to all lands of inheritance belonging to his father, in exclusion of the younger sons.

PROBATE. Probate of a will is a copy of the will on parchment, under the seal of the Court of Probate.

PROCEDENDO. Where a cause has been removed from an inferior to a superior court by *certiorari* or otherwise, and it is wished to send it back again to such inferior court, this is done by writ of *procedendo*. So if a judge of an inferior court delays the parties this writ issues against him.

PROCHEIN AMY. "Next friend." An infant sues by *prochein amy*, because of his legal inability to sue in his own right.

PROTECTOR OF SETTLEMENT, is a functionary created by the stat. 8 & 4 Will. 4, c. 74, being entirely unknown before. But his office is in effect somewhat similar to that of the old tenant to the præcipe, operating in like manner as a check upon the too free alienation of settled estates.

PUIS DARREIN CONTINUANCE. "Since the last continuance." A plea which before the operation of the Judicature Acts was pleaded when the cause of defence arose after action brought, and within eight days before the pleading thereof.

PUR AUTRE VIE. "For the life of another." An estate *pur autre vie*, is an estate which endures for the life of some other person.

PURCHASE, in its technical sense, signifies that real property is acquired in any other manner than by descent.

PURVIEW. The purview of an Act is that part which begins with the words, "Be it therefore enacted," being the body of a statute.

Q.

QUANTUM MERUIT. "As much as he deserves." Where one person is employed by another to do work, the law implies that he is to be paid for it, which is termed his *quantum meruit*.

QUARE CLAUSUM FREGIT. "Wherefore he broke the close." Where there is a trespass to land, the action brought to recover damages for it is termed an action of *trespass quare clausum fregit*.

QUARE IMPEDIT. "Why he hinders." The action of *quare impedit* is the one brought to try a disputed title to an advowson.

QUASH. To make void, to annul.

QUE ESTATE. "Which or whose estate." A term used in pleading.

QUI TAM. Suing *qui tam*, is prosecuting a popular action for the purpose of recovering the penalty; so called because the prosecutor sues *as well (qui tam)* for the Crown as himself.

QUIA EMPTORES. "Because the purchaser." The stat. 18 Edw. 1, which prevents a further sub-infeudation of estates in fee-simple is so called.

QUID PRO QUO. "What for what." Used in law for giving one thing for another; a mutual consideration.

QUIT RENTS, are rents at which the freeholders and copyholders of a manor have held under the lord from time immemorial, and which cannot be varied. They are also called *rents of assise*.

QUO WARRANTO. A writ of *quo warranto* is one that lies for the Crown against any one who has usurped any office or liberty, to inquire by what authority he has done so. It is now superseded by an information in the name of the Attorney-General in the nature of a writ of *quo warranto*.

QUOAD. "As to, concerning, etc." As, *quoad* the freehold, &c.—relating to or concerning the freehold.

QUO MINUS. A writ by which the Court of Exchequer gained its jurisdiction over purely civil actions.

QUORUM. "Of whom." Among the justices of the peace appointed by the king's commission there were some who were more eminent for their skill and discretion than others, one *of whom*, on particular occasions, the commission required should be present, and without him the others could not act; and these persons were thence termed justices of the *quorum*. But now the practice is to advance almost all to this dignity, naming them all over again in the *quorum* clause.

R.

RACK-RENT, is a rent of the full annual value of the property, or near it.

RAPE. This word has several meanings, but it is used generally to denote the ravishing or carnal knowledge of a woman against her will.

REALTY. That which relates to real property, *i.e.*, to lands and tenements.

RECOGNISANCE, is an acknowledgement upon record to do some act, as to pay a debt.

RECORD. An authentic testimony in writing on rolls of parchment, and preserved in courts of record.

RECOVERY. A recovery was one of the ancient modes of barring estates tail and dower, and transferring the interest of married women in real property. In their nature they were fictitious suits brought by the intended purchaser, called the demandant, against the tenant for life, called the tenant to the *præcipe*; and carried on to judgment and execution. See now 3 & 4 Will. 4, c. 74.

REDDENDUM, is that part of a deed by which the grantor reserves something to himself for what he has before granted; as the reservation of the rent in a lease.

REDDITUS SICCUS. "A dry or barren rent." So called because before the stat. 4 Geo. 2, c. 28, no distress could have been made for it.

REDEMPTION. See tit. "Equity of Redemption."

RELATOR, is generally used to signify an *informer*; as, when an information is filed by the Attorney-General at the *relation* of some informant.

REMAINDER. See *ante*, p. 51.

REMANET, signifies that which remains. Causes which remain from one sitting to another are so termed.

RENDER. "To give up, to yield." Thus rents are said to lie in *render*.

REPLEVIN. An action of replevin is one adopted to try the validity of a distress, or to recover the possession of goods unlawfully taken. It may now be commenced either in the County Court or in one of the Common Law Divisions of the High Court.

REPRIEVE. To reprieve is to withdraw or suspend execution for a time, when a person has been sentenced to suffer death.

RETURNO HABENDO. A writ that lies for the distrainer of cattle or goods, &c., who, on replevin brought, has proved his distress good, against the person whose cattle or goods were distrained, to have them returned to him.

REVERSION. See *ante*, p. 51.

S.

SCIRE FACIAS. "That you make known." A *scire facias* is a judicial writ founded upon some matter of record, and requiring the person against whom it is brought to show cause why the party bringing it should not have the advantage of such record, or (as in the case of *scire facias* to repeal letters patent) why the record should not be annulled and vacated. It is in law considered as an action. See hereon the stat. 15 & 16 Vict. c. 76.

SCUTAGE. See tit. "Escuage."

SED PER CURIAM. "But by the whole court."

SEISIN. Possession of a *freehold* estate.

SEMBLE. It seems; it appears, &c.

SEQUESTRATION. This word is used in various senses. When used at law it generally signifies an execution for debt against a clergyman or beneficed clerk. In Chancery it is used to denominate a part of the process of contempt; *i.e.*, a writ to take the party's personal estate and the profits of his real estate, in consequence of his refusal to obey the orders of the court.

SERJEANTY. A species of tenure by knight's service, due to the king only, and divided into *grand* and *petty* serjeanty, the former being to do some honorary service for the king, as, to carry his banner, his sword, or the like; the latter, to render the king some small implement of war, as, a lance, a sword, or the like.

SEVERAL TAIL. An entail *severally* to two, is when lands are given to two men, and their wives, and the heirs of their two bodies to be begotten; here the donees have a joint estate for their two lives, and yet they have a *several* inheritance, because on the death of either his issue takes his moiety.

SEVERALTY. An estate in severalty is where the tenant holds it without anyone being joined or connected with him in point of interest during his estate therein.

SIMONY, is the corrupt presentation to a church or ecclesiastical benefice for money, gift, or reward. It is said to be termed *simony* from the resemblance it bears to the sin of Simon Magus.

SIMPLE CONTRACT, is one that is evidenced by oral testimony or by writing, *not* under seal.

SINE DIE. "Without day." When a proceeding is adjourned *sine die*, it is understood to be adjourned for an indefinite period.

SLANDER, is the malicious defamation of a man, either with respect to his character, trade, profession, or occupation, by word of mouth.

SOCAGE, in its most general and extensive signification, seems to denote a tenure by any certain and determinate service. It is of two sorts : (1) *Free socage*, where the services are not only certain but honourable, which we now term freehold ; and (2) *Villein socage*, where the services, though certain, are base, and from which tenure we are said to derive our copyholds.

SON ASSAULT DEMESNE, is a defence which is used in an action of *trespass and trespass on the case*, by which the defendant alleges that it was the plaintiff's own *original assault* that occasioned the trespass for which he brings his action, and that what the defendant did was merely in his own defence.

SPECIAL SESSIONS, are extraordinary sessions of the justices in cities and divisions of counties for the granting of alehouse and beerhouse licenses, allowance of jury lists, &c.

SPECIAL PAPER, is a court paper containing a list of special cases and *demurrers* set down therein for argument.

SPECIFIC LEGACIES, are such as are specified or particularised by a testator in his will ; as, the bequest of a *particular diamond ring*. Specific legacies only abate for payment of debts.

SPOILIATION, is an injury done by one clerk or incumbent to another in taking the fruits of his benefice, without any right to them, but under a pretended title.

STATUTE MERCHANT, is an instrument in the nature of a bond, introduced in the reign of Edward I., for the purpose of charging lands with the payment of debts contracted in trade. It empowers the seizing of the body and goods, and also the taking possession of the lands. It is called a Statute Merchant because it was entered into between *merchants*, and made by virtue of a *statute*. These securities have now, however, fallen into disuse.

STATUTE STAPLE, is a security for a debt acknowledged to be due before the mayor of the *staple*, *i.e.*, the mart for the sale of the principal commodities of the kingdom, formerly held by Act of Parliament in certain towns. Both the body, goods, and lands can be taken under it. It is so called because it is entered into before the mayor of the *staple*, and in the form provided by *statute*. These securities are also in disuse.

STIRPES. When next-of-kin take by *representation* they are said to take *per stirpes*.

STOPPAGE IN TRANSITU, is that right which the law gives the vendor of goods sold on credit to *stop them whilst on their way*, when the purchaser has become bankrupt.

SUBORNATION OF PERJURY, is defined to be the offence of procuring another to take such a false oath as would constitute perjury in the principal.

SUBTRACTION, is the offence of withdrawing from another what he, by law, is entitled to. There are various kinds of this offence; as, subtraction of suit and services, subtraction of titles, subtraction of legacies, &c.

SUFFERANCE. A tenant at sufferance is one who enters into possession of and holds lands and tenements by a lawful title, and continues in possession after that title is determined.

SURCHARGE, signifies an overcharge. As, to surcharge an account in equity.

T.

TACKING. This word is applied to mortgages, and is used as a means by which a subsequent mortgagee obtains priority over a prior mortgagee. Thus, if a third mortgagee has advanced his money on a mortgage without notice of a second, he may, by purchasing the first legal mortgage, tack his third mortgage to the first, and so postpone the intermediate incumbrance.

TAIL, is derived from the French *tailler*, to cut. This word, when used in connection with the word *estate* or *fee*, signifies an estate which is descendible to the lineal heirs only of the owner. It is a fee cut down, and is termed an estate in fee tail and the owner *tenant in tail*.

TALES. When by reason of challenge to the jurors or other causes a sufficient number of them do not appear to be sworn, either party may pray a *tales*, as it is termed; that is, a supply of such men as are present in Court, in order to make up the difference.

TENANT AT SUFFERANCE. See tit. "Sufferance."

TENANT AT WILL. See tit. "Will, Estate at."

TENANT BY THE CURTESY. See *ante*, p. 30.

TENANT IN TAIL. See tit. "Tail."

TENANT IN TAIL after possibility of issue extinct. See *ante*, p. 30.

TENANT TO THE PRÆCIPE. See tit. "Recovery."

TENANTS IN COMMON, are such as hold the same lands, with interests accruing under different titles, or accruing under the same title (other than descent), but at different periods; or conferred by words of limitation importing that the grantees are to take in distinct shares.

TENENDUM, is that part of a deed which is characterised by the words "to hold."

TENURE, from *tenere*, to hold. Tenure signifies the system of holding lands or tenements in subordination to some superior, and which, in the feudal ages, was the leading characteristic of real property, and which we still recognise.

TERRE TENANT, is he who is literally in the possession and occupation of the land.

TESTATOR, is the maker of a will or *testament*.

L

TORT. A wrong or injury.

TOTIES QUOTIES. As often as.

TRAVERSE. In the language of pleading signifies a denial.

TREASON, from the French *trahir*, to betray. See *ante*, p. 65.

TRESPASS, in its ordinary sense signifies an injury committed with *violence*, and the violence may be either *actual* or *implied*; and the law will imply violence though none is actually used, where the injury is of a *direct* or *immediate* kind, and committed on the person, or tangible and corporeal property of the plaintiff; as, where there is a peaceable but wrongful entry upon a person's land.

TRESPASS ON THE CASE, was the form of action adopted to recover damages for an injury which was not accompanied with *immediate* violence.

TROVER (from *trouver*, to find), is an action adopted to try a disputed question in goods and chattels. It is called trover because it is founded upon the supposition (generally, however, a fiction) that the defendant *found* the goods, and then converted them to his own use.

TRUST. A trust when used in the sense of an interest is the equitable or beneficial interest or ownership of or in real or personal estate, existing apart from and collateral to the legal interest or ownership.

U.

USANCE, signifies the time which, by the *usage* of different countries between which bills of exchange are drawn, is appointed for their payment.

USE. A use as distinguished from a trust (see tit. "Trust") is that interest which the Statute of Uses (27 Hen. 8, c. 10) transfers into possession, thereby making the *cestui que use* complete owner of the lands as well at law as in equity. Before the Statute of Uses, it had the same meaning as a trust.

USER, is the act of *using* or enjoying any profit or benefit to be taken from or upon land, or any easement to be enjoyed upon or over any land or water. This *user*, if continued sufficiently long, may give a *prescriptive* right to the profit or easement.

V.

VENUE, signifies the county in which an action is intended to be tried, and from which the body of jurors are to be summoned.

VERDICT, is the unanimous opinion or decision of a jury, on the issue submitted to them. Verdicts are either *general* for the plaintiff or defendant, or *special*, stating all the facts of the case, and leaving it to the court to pronounce the proper judgment.

VILLEINS, were a sort of people under the Saxon government in a condition of downright servitude, who were employed in the most servile works, and were said to have belonged to the lord of the soil like the cattle upon it. They were either villeins *regardant*, that is, annexed to the manor or land, or in *gross*, i.e., annexed to the person of the lord. The tenure by which villeins held their land was termed *villenage*, from which tenure we are said to derive our copyholds.

VIVUM VADIUM. A living pledge or mortgage. Where a man borrows a sum of money of another (suppose 200*l.*) and grants him an estate as of 20*l.* per annum to hold till the rents and profits shall repay the sum so borrowed, in this case the land or pledge is said to be *living*; it subsists and survives the debt, and immediately on the discharge of that, reverts back to the borrower.

VOLUNTARY CONVEYANCE. Conveyances are termed *voluntary* when they are made without any valuable consideration.

W.

WARRANT OF ATTORNEY, is a written authority directed to one or more attorneys to appear for the party executing it, in some court, and there to receive a statement of claim at the suit of the party to whom the warrant is given, and to confess the same, or to suffer judgment to pass against him by *nil dicit*, or otherwise. It also generally contains an authority to the attorney to execute a release of errors; and on this account it is that a warrant of attorney must be under seal; but if it be to confess judgment merely, it need not be under seal.

WASTE, is the destroying by a tenant for life or years of any of those things which are not included in temporary profits of the land, and which would tend to the injury or loss of the person entitled to the inheritance. Waste is either *voluntary* or *permissive*, the former being an act of commission, the latter being an act of omission.

WELSH MORTGAGE, is one by which the proviso for redemption does not oblige the mortgagor to pay the money on a particular day, but allows him to do it at any indefinite time, thus giving him a perpetual right of redemption.

WILL OR TESTAMENT, is a written instrument by which a person makes known what he wishes or *wills* to be done with his property, &c., after his death. Wills were technically divided into *wills* or *devises*, and *wills* or *testaments*, the former having reference to real estate, the latter to personal estate. But there cannot now be said to be any difference between them. See 1 Vict. c. 26.

WILL, ESTATE AT. An estate at will is the interest which a person has in lands or tenements during the will or permission of another. But strictly it is held at the will of both parties.

WRIT OF INQUIRY. A judicial writ directed to the sheriff commanding him to *inquire* the amount of damages which a party who has obtained an interlocutory judgment is entitled to.

WRIT OF TRIAL. Formerly, when an action was brought in one of the Superior Courts, and the amount sued for was under 20*l.*, and there was no particular question of fact or law, then instead of the cause being tried at *nisi prius*, it was tried before the sheriff, and for this purpose a *writ of trial* was issued. By the 30 & 31 Vict. c. 141, s. 6, however, this writ is abolished.

Y.

YEAR BOOKS, are the books containing the reports of cases adjudged or determined in the courts of law from the beginning of the reign of Edward II. to the end of Edward III., and from the commencement of the reign of Henry IV. to the end of Henry VIII. They are called *year books*, because they were published *annually* from the notes of certain persons who received a stipend from the Crown for their employment.

YEARS, ESTATE FOR. An estate for years is the interest which a man has in lands and tenements for a term or number of years agreed upon.

1

2



